

# The Solicitors' Journal

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## CURRENT TOPICS

### New Year Honours

IN the list of Knights Bachelor in the New Year Honours solicitors will read with special pleasure the name of Mr. WILLIAM CHARLES CROCKER, who is described therein as "lately President of The Law Society." This is by no means a full record of his services to the profession, nor of his exceptional ability for the specialised work for which he is famous in lay as well as in legal circles. The name of Brigadier FRANK MEDLICOTT, also included in the list of Knights Bachelor, is well known to the public as that of a doughty fighter in the political field as well as in that of war, having been the Member of Parliament for East Norfolk from 1939 to 1950 and for Central Norfolk since 1950. He, too, is a solicitor. Mr. DAVID ARNOLD SCOTT CAIRNS, Q.C., recently appointed chairman of the Monopolies and Restrictive Practices Commission, is similarly honoured, as is Mr. ROBERT BERNARD WATERER, solicitor to the Board of Inland Revenue. To those, and to the many other members of the legal profession mentioned in the New Year Honours (see p. 31, *post*), we offer our hearty congratulations.

### Legal Aid Applications: A Reduction

THE Comments and Recommendations by the Advisory Committee under the Legal Aid and Advice Act, 1949, on the Fourth Annual Report of The Law Society of 30th June, 1954, which was published with the Comments on 30th December, 1954 (H.M. Stationery Office, 1s. 6d.), states that the number of applications for legal aid continues to fall, although the need for unassisted litigation has not appreciably altered. A reason for this decrease given by the committee is that the number of divorce proceedings which had to wait for the Scheme before they could be brought has now been disposed of. A further reason is hazarded, that "perhaps assisted litigants are realising that the Scheme is not always free, and so do not enter so readily into litigation." As to the second, the premise that assisted persons enter rashly into litigation is not consistent with the facts. The Fourth Report of The Law Society states that, in the opinion of the Council, the figures "do not prove any support to the suggestions which have been made from time to time that civil aid certificates are too freely given." The figures of successfully fought cases, given in the Advisory Committee's Comments, support this. One of the reasons for the fall in the number of applications for legal aid may well be that the terms offered to individual litigants are more severe than those which can be offered by solicitors acting outside the Scheme. In this we disagree with the view of the Advisory Committee expressed in both their last and their present report that "the amount asked for in contribution does not appear to prevent people from accepting the terms on which legal aid is offered to any greater extent now than it did at the inception of the Scheme." Another matter which has not, we submit, been without its effect in discouraging resort to legal aid is the admitted unreasonable delays in paying counsel and solicitors owing to delays in taxation. The Advisory Committee promise to continue to watch the position. No mention is made of the complaint that taxing

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masters are inclined to reduce and disallow items in taxing legally aided cases more than in unaided cases. The success of the Scheme depends upon the willing co-operation of the legal profession, which worked in the cause of legal aid without remuneration for many years before the Scheme came into being and now sacrifices 15 per cent. of its fees under the Scheme. The Advisory Committee's Comments seem to lack the correct emphasis.

#### The Area Committees

WHILE the work of the certifying committees has become less, the Advisory Committee on Legal Aid say in their Comments, the work of the Area Committees has increased. The number of certificates discharged by the Area Committees has increased by 4,000, and there have been 6,000 more payments to solicitors and 4,000 more to assisted persons. The total number of applications dealt with during the year has increased by 12,000. As the work of Area Committees is connected with certificates granted, in some cases, several years earlier, they have not yet been affected by the decline in cases during the course of the last two years. The increased number of payments to assisted persons' solicitors and to counsel has been the main cause of the increase from £155,000 to £1,075,000 of the total amount required from public funds to pay for the Scheme. The committee further state that, since they last reported, the Landlord and Tenant Act and the Housing Repairs and Rents Act have been passed, and they will, as the committee state, result in frequent proceedings in the county court in which it will be "almost impossible for the litigant to do justice to his case in person." They "involve the public in legal matters of the greatest complexity and failure to appreciate the provisions of the Act may have the most serious consequences." They urge that the Legal Advice Scheme, as well as legal aid in the county courts, should be brought into operation without delay, and congratulate The Law Society and their committees upon a further year of sound and efficient administration of the Legal Aid Scheme.

#### Landlord and Tenant Act, 1954: Further Regulations

FURTHER forms of notices to terminate business tenancies under s. 25 of the Landlord and Tenant Act, 1954, have been prescribed, with effect from 3rd January, 1955, by the Landlord and Tenant (Notices) (No. 2) Regulations, 1954 (S.I. 1954 No. 1714). They relate respectively to notices containing a copy of a certificate under s. 57 (1), s. 58 or s. 60 of the Act, that is to say, notices terminating business tenancies on grounds of public interest, national security, or in furtherance of the objects of the Distribution of Industry Acts, and will therefore normally emanate from Government departments or other public bodies in their capacity as landlords. The regulations contain a saving for notices complying with reg. 4 of the original regulations which had been given before 3rd January.

#### Central Land Board: Certificates of Unexpended Balances of Established Development Value

SECTION 48 of the Town and Country Planning Act, 1954, empowers the Central Land Board, on application, to provide information in the form of a certificate showing in relation to any land whether there is any, and if so, what, original unexpended balance of established development value standing to the credit of that land. These balances now form both the qualification for, and the maximum measure of, compensation for future planning restrictions under the 1954 Act, and their ascertainment is of the highest importance

to potential purchasers. Where the land has been divided since the original claim on the £300m. fund was admitted, difficult questions of apportionment may arise. The form of application for the Central Land Board's Certificate has now been prescribed by the Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720), and the completed application is required to be sent to the district valuer.

#### Planning Compensation: An Official Guide

THE absence of a legal advice service and of a large measure of the legal aid contemplated by the Legal Aid and Advice Act, 1949, has been emphasised by official explanations of how new legislation may affect private rights. The Ministry of Housing and Local Government disclosed at the end of the year that the sales of their recent booklets on the Housing Repairs and Rents Act already approach the half-million mark. The latest venture of the Ministry in the field of popular legal exposition (a booklet on the Town and Country Planning Act, 1954) may not reach that astonishing success, but at sixpence, which is possibly near its cost price, it should sell much better than most legal publications. The Act came into operation on 1st January, 1955, and the booklet's subtitles, "How to claim payments" and "A Guide for Owners of Land," indicate its purpose. As befits its subject-matter, the booklet is itself well planned, beginning with a brief explanation of the purpose of the Act and then proceeding to answer twenty questions, ten on payments on account of past events and ten on payments on account of future events. Appendices contain a specimen form of claim for compensation for planning restrictions, a specimen form of application for Central Land Board payment, and addresses of the Central Land Board Regional Officers. The booklet does not pretend to cover everything, and further information can be obtained on matters affecting payments by the Central Land Board from the Regional Offices of the Board, and on compensation for planning restrictions from the Ministry of Housing and Local Government. No doubt the booklet will assist applicants to some extent, the extent being measured by their degree of comprehension of the complex technicalities of town planning. None of the answers is brief. The explanation of the ways in which payments can become due for events in the past necessarily occupies over a page and the restrictions for which compensation is excluded occupy a page. The exposition could not be clearer, having regard to the subject-matter, and solicitors and others with town planning experience will find it a great help, but a better illustration of the urgent need for bringing into operation the legal advice provisions of the Legal Aid and Advice Act, 1949, would be hard to find.

#### The Lord Justice-General

LORD COOPER, we learn with regret, has resigned from the office of Lord Justice-General and President of the Court of Session on account of ill health. We wish him a speedy recovery. Called to the Scottish Bar in 1915 at the age of 22 after his education at George Watson's College and Edinburgh University, he practised in Edinburgh, the West Division of which he represented in Parliament from 1935 to 1941, becoming Solicitor-General for Scotland in 1935, Lord Justice-Clerk in 1941 and Lord Justice-General in 1947. His successor, the Rt. Hon. JAMES LATHAM McDIARMID CLYDE, is the son of Lord Clyde, who was Lord Justice-General from 1920 to 1935. He was born in 1898, and educated at Edinburgh Academy, at Edinburgh University and at Trinity College, Oxford. In 1951 he became Lord Advocate.

### The Nuffield Foundation's Annual Report

IN the eleven years since the Nuffield Foundation was established by LORD NUFFIELD in 1943 and endowed with shares to a value of £10 million the Foundation has allocated grants to a total of over £5 million. This is disclosed in its annual report for the year ended 31st March, 1954, published on 30th December, 1954. The report quotes Dr. ADRIAN as having said in his presidential address to the British Association that the development of the social sciences might well be the most important scientific development of this century, and adds: "The Foundation is committed to support social science research and will be particularly interested in practical study in certain fields, including an independent investigation of the problem of local government." The Rt. Hon. Lord Justice DENNING, on behalf of the Society of Comparative Legislation and International Law, submitted to the Foundation a proposal for the production of a digest of international law, and a grant has been made of up to £12,000 over five years for this purpose. The practice of the United States has already been published, and the publication of a comprehensive and authoritative account of British practice in international law—which is longer and richer than that of any other State—might have far-reaching and beneficial influence. The digest will not aspire to a systematic treatment of the whole of international law, living or dead, but will take those topics which have shown the greatest vitality, outlining the principles evolved and applied in British policy and British courts. Among these topics are State succession, recognition of States and Governments, title to territory, the régime of the high seas, territorial waters, diplomatic practice, State immunity, treatment of foreigners, treaty practice, and extradition. The Foreign Office has welcomed the project and is prepared to open its archives, down to the present day, to research workers, subject only to an over-sight for security reasons before publication. An editorial board, consisting of prominent personalities in the field of inter-

national law, is being formed. A number of part-time and full-time workers will carry out the research and Sir GERALD FITZMAURICE, K.C.M.G., legal adviser of the Foreign Office, who is a member of the standing committee of the Society of Comparative Legislation and International Law, has agreed to supervise the work.

### Administrative Law

WE take leave to quote from Professor H. W. R. WADE's letter to *The Times* on 23rd December because, in our submission, it is the most important pronouncement so far made on the subject of administrative tribunals. He wrote: "No one should belittle the work of tribunals; but they suffer from the system, or rather lack of system, in which they have to operate. They have not, as the courts of law have, centuries of experience behind them, crystallized into rules of procedure which are the best possible guarantee of fair dealing. . . . Procedure is no trifle, it is the whole heart of this matter. With the best will in the world it is easy for a tribunal or official, wielding power over the rights of individuals, to take a false step by assuming what ought to be proved, or by dismissing summarily what he thinks is the weaker side of the case. There are two remedies which ought to be combined. First, it should be the mission of the courts to impart to other tribunals the best elements of the judicial technique, especially the sense of tenderness to those whose rights are to be invaded. . . . But, for some unfathomable reason, just at the time when this principle should have been affirmed and extended, there came a number of decisions from the highest courts which have seriously shaken it. Perhaps the most notable was the decision of the Judicial Committee of the Privy Council in 1951 that it was lawful for a trader's licence to be cancelled—thus depriving him of his livelihood—without giving him a hearing of any kind." Professor Wade concluded: "Administrative law is at present in such a state that a comprehensive inquiry should be commissioned as a matter of urgency."

## AN INSURER'S LIABILITY FOR UNROADWORTHY VEHICLES

By the Road Traffic Acts at present in force, and the regulations made under them, motorists are required to keep their vehicles in a proper state of roadworthiness. Stricter enforcement of these provisions is envisaged by the new Road Traffic Bill recently introduced in Parliament. One of its clauses enables the Minister of Transport and Civil Aviation to require that motor vehicles shall not be used unless their condition and that of their equipment have been examined, and to appoint examiners or to set up testing stations where the examinations can be carried out. In addition to paying the penalties provided by the law for driving unroadworthy vehicles, a motorist may sometimes find that, if damage results, he is not covered by the terms of his insurance policy, for liability is often excluded by the insurance company if the vehicle was not in an efficient condition. The relevant terms used in insurance policies vary, and have been the subject of a number of judicial decisions.

One of the questions to be considered in *Crossley v. Road Transport & General Insurance Company* (1925), 21 Ll.L. Rep. 219, was the construction of a term in a policy that the insured should see that at all times his car was in "proper working order." At the time of the accident the brakes had become defective and required adjustment, but he did not

know of this. However, the evidence established that the defective condition was not the cause of the accident. Roche, J. (as he then was), stated that the insurance company contended that the clause meant that the insured should see that the car was in working order and condition during the whole currency of the policy, whether he knew of its being out of condition or not. Another construction was that the insured should see, so far as sight and prevision would allow him, that the car should continue in that condition. The learned judge referred the matter back to the arbitrator so that he might add a finding as to whether the insured ought to have been aware at any time before the accident, by the exercise of reasonable care, of the inefficiency of his brakes. It is submitted that the reasoning of this case seems a little at fault, since from the words of the report there appears to be no modification of the absolute warranty to see that the car was in proper working order by the addition of such terms as that the insured was to take "all reasonable steps to see" that the vehicle was roadworthy, or that it was to be in proper working condition "to the best of his knowledge."

The wording in the policy in *Jones and James v. Provincial Insurance Company, Ltd.* (1929), 46 T.L.R. 71, was: "The insured shall take all reasonable steps to maintain (the) vehicle

in efficient condition." The insured had removed the foot-brake, leaving only a handbrake. The vehicle was damaged, but the exact cause of the accident could not be ascertained. Judgment was given for the insurance company, which had denied liability on the ground that the insured had not complied with the terms of the clause.

A commercial vehicle had been insured under the policy in *Jenkins v. Deane* (1934), 103 L.J.K.B. 250, and the underwriter had excluded liability if the vehicle were driven "in an unsafe condition, either before or after an accident." The vehicle took another lorry in tow, and through the negligence of both drivers and a defective tow-chain a third party was killed. Goddard, J. (as he then was), in giving judgment against the underwriter, held that there was no suggestion that the vehicle was in an unsafe condition, and in his opinion the tow-chain was not part of the vehicle.

In *Barrett v. London General Insurance Company, Ltd.* [1935] 1 K.B. 238, the insurance company had excluded their liability in respect of any accident while the insured was driving the car "in an unsafe or unroadworthy condition." Goddard, J. (as he then was), found that the accident had been caused by the footbrake failing at the critical moment, and the only evidence before him was that at the moment of the accident the car was unsafe and unroadworthy. In his opinion, the principle of marine insurance should be applied, i.e., that there was an implied warranty that a ship was seaworthy at the time of sailing, but no warranty that she should continue seaworthy throughout the voyage. The clause in question should be read as meaning that the car must be roadworthy when it set out on its journey. If it were otherwise, and a stone caused a fracture of the brake cable during the course of the journey, and an accident occurred because the brake failed, the insurance company would not be liable. Everyone knew that in a motor car something might go wrong in the course of a journey which might temporarily, at any rate, put the car out of control, and if that exclusion were to relieve the company, it seemed to him that the indemnity given by the policy would be exceedingly precarious. The onus of proving unroadworthiness was on the company, and they had failed to prove that the car was unroadworthy when it set out on its journey, and were therefore liable on the policy.

On the other hand, in *Trickett v. Queensland Insurance Co., Ltd.* [1936] A.C. 159, the Judicial Committee of the Privy Council gave judgment for the insurance company, which had provided in one of the clauses of the policy that no liability was to attach if the vehicle was "being driven in a damaged or unsafe condition." Here the company had proved that at the time of the accident the vehicle was being driven without lights, though, according to counsel's arguments, it appeared that they were functioning properly when the car set out on its journey. Their lordships, in reviewing *Barrett's* case, felt that the analogy drawn from the position of a ship at sea as to seaworthiness was unsound in relation to that of a motor car on land as to roadworthiness, though they agreed with the result reached by the learned judge on the facts. The two cases seem irreconcilable, though a possible explanation

is that in the earlier case the defect was latent, whereas in the later case it was patent, for on the evidence their lordships felt that they would have had great difficulty in holding that the insured was ignorant of the unfit condition of his car. However, they held that the knowledge of the insured was immaterial in connection with the words found in the policy, for they were couched in unambiguous terms, and there was no justification for adding to them "to the knowledge of the driver."

In *Brown v. Zurich General Accident and Liability Insurance Company, Ltd.* [1954] 2 Lloyd's Rep. 243, the policy contained a clause providing that "the insured shall take all reasonable steps to safeguard from loss or damage and maintain in efficient condition the vehicle . . . and the company shall have at all times free access to examine any such vehicle."

The insured vehicle was damaged after a skid on an icy surface, and the company disputed liability on the ground that the vehicle had not been maintained in efficient condition. The matter was referred to arbitration, and the arbitrator considered that, in so far as the clause was ambiguous, it should be construed against the insurers, i.e., that it meant that the insured should take all reasonable steps "to safeguard from loss or damage" and also take all reasonable steps to "maintain in efficient condition." In his finding of fact, he stated that the condition of the windscreen and of the bodywork, which was rather old and shaky, did not constitute any breach of the clause, and all that he derived from those circumstances was that they constituted some slight evidence of failure by the insured to take all reasonable steps to maintain the vehicle in efficient condition. On the other hand, he found that those parts of both tyres on the front wheels which adhered to the road were smooth, being completely devoid of any trace of tread, though not worn down to the canvas at any point. The insured, by neglecting to replace the smooth front tyres with new, retreaded or other tyres with adequate treads, had failed to take reasonable steps to safeguard the vehicle, or to maintain it in efficient condition within the meaning of the clause.

This finding in favour of the insurance company was upheld by Sellers, J., in the Queen's Bench Division, even though the skid which caused the damage might have occurred even if the front tyres had had adequate treads, since on ice no tyres provide sufficient adhesion. The learned judge said that it seemed to him that "efficient condition" of a vehicle really involved the taking of reasonable steps to make or keep the vehicle roadworthy, i.e., in an efficient condition for the purpose for which it was going to be used, namely, to run on the roads. He rejected the argument that the clause did not apply to the tyres or body, but only to the mechanical parts of the vehicle, for the normal meaning of "vehicle" was "the complete vehicle with tyres."

Perhaps this decision will bring home to motorists the necessity of complying with the terms of policies relating to roadworthiness and of seeing whether the duty imposed is an absolute one, or only one requiring the taking of all reasonable steps to see that it is fulfilled.

E. R. H. I.

The Queen has been pleased to approve the appointment of Major GEORGE DENIS ANDERSON to be Chairman of the Court of Quarter Sessions for the County of Northumberland in succession to His Honour Thomas Richardson, O.B.E., who is to retire on 28th February. The appointment takes effect from 1st March, 1955.

Mr. JOHN EDWARD GREENWOOD, assistant solicitor to Dewsbury Corporation, has been appointed deputy town clerk of the Royal borough of New Windsor as from 31st January.

The Lord Chancellor has appointed Mr. JOHN GWILYM JONES to be the Registrar of Wrexham, Denbigh and Ruthin, Holywell, Mold and Rhyl County Courts and District Registrar in the District Registries of the High Court of Justice in Wrexham and Rhyl as from 1st January, in succession to Mr. E. Louis Jones, who retired on 31st December, 1954.

Mr. THOMAS BORTHWICK ALEXANDER MOONLIGHT, senior assistant solicitor at Dagenham, has been appointed deputy town clerk of Ashton.

**Company Law and Practice****RESOLUTIONS WHEN NO QUORUM PRESENT**

THERE are only two certain methods of ensuring a good attendance at a company meeting. The first is to pass a dividend, the second is to announce that free hospitality will be dispensed. Harrassed secretaries of prosperous, but temperate, companies, the articles of which follow Table A of the Companies Act, 1948, will therefore welcome any small measure of relief that may be afforded to them by the decision in *Re Hartley Baird, Ltd.* [1954] 3 W.L.R. 964; 98 Sol. J. 871. They need only ensure that a quorum is present at the time the meeting begins; they do not have to keep an eagle eye open throughout the proceedings in case a vital member slips away before the necessary votes are taken.

*Re Hartley Baird, Ltd.*, was a case decided on articles which expressly excluded Table A, but two of the relevant articles, as set out in the report, do not appear to differ materially from those of Table A of the Companies Act, 1948:—

*Re Hartley Baird, Ltd.***Article 52**

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. For all purposes the quorum shall be ten members personally present.

**Article 53**

If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting . . . shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

From the similarity of the two sets of articles it is considered that *Re Hartley Baird, Ltd.*, will be an authority on the interpretation of arts. 53 and 54 of Table A in so far as they apply to general meetings, as well as in cases where special articles are adopted identical to those of Hartley Baird, Ltd., but, surprisingly, not necessarily in connection with class meetings.

In *Re Hartley Baird, Ltd.*, a quorum was present when a meeting of a class of shareholders proceeded to business, but before a vote was taken on the resolution one member left the meeting, reducing the number of members present at the meeting to less than a quorum. Wynn Parry, J., held (differing from the Court of Session in *Henderson v. Louttit and Co., Ltd.* (1894), 21 R. (Ct. of Sess.) 674) that, although a quorum must be present when the meeting proceeded to business, it was not necessary that the quorum should also be present when the vote was taken, particularly as this

construction was the only one which could prevent there being a gap in the scheme of the articles.

The opposite point of view to that of Wynn Parry, J., had been taken by the Court of Session in *Henderson v. Louttit & Co., Ltd.*, on the ground that it would be both inconvenient and unnatural to hold that all that was necessary to the validity of the proceedings was that at the earliest stage the quorum must be present, but after the meeting had got down to business the quorum might go away. At its best the argument of inconvenience is an unattractive one, and it seems rather less attractive by the fact that a member at a meeting may either vote or abstain. Hence on the argument in *Henderson's* case, if the disgruntled member left the meeting the proceedings would be invalid, but if he remained in the room and took no further part in the proceedings the proceedings would be valid.

Wynn Parry, J., in the course of his judgment, observed that although the Court of Session was considering an article in all respects similar to art. 52 in the articles of Hartley Baird, Ltd., the article corresponding to art. 53 in that company's articles did not appear to have been cited to the court. Interpreting the articles in the light of the maxim *ut res magis valeat quam pereat*, his lordship placed an interpretation on art. 52 which resulted in arts. 52 and 53 forming a complete scheme.

In *Re Hartley Baird, Ltd.*, the quorum for general meetings, but not for class meetings, was ten, a fairly large number. In Table A the quorum is the more usual three. The question may arise in connection with a company that adopts articles similar to Table A as to what would be the position if two out of three members left a general meeting. Apart from the exceptional case where a meeting is convened by order of the court (Companies Act, 1948, s. 135 (1)) one shareholder cannot constitute a meeting (*Sharp v. Dawes* (1876), 2 Q.B.D. 26), even where he is present in several distinct capacities as, for example, an individual shareholder, a trustee of a trust and as proxy for another member (*Re Prain & Sons, Ltd., Petition* [1947] S.C. 325). It is thought that if a quorum were present when the meeting proceeded to business, but if after a time only one member survived, he could not validly pass resolutions, as there appears to be a distinction between a meeting (which on the natural meaning of the word implies more than one person) at which the number present has fallen below the original number necessary to constitute the quorum to enable the meeting to commence business, and one surviving shareholder from the original quorum at the meeting, who does not constitute a meeting at all.

The point which arose in *Re Hartley Baird, Ltd.*, may also be considered in connection with art. 4 of Table A, which deals with the modification of class rights by class meetings, and provides that:—

"To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class . . ."

Article 4 of Table A may also be compared with the relevant part of art. 46 of Hartley Baird, Ltd.:—

"To any such separate meeting all the provisions of these articles as to general meetings of the company . . . shall *mutatis mutandis* apply, but so that the necessary quorum shall be members of the class holding or representing by

proxy one-third of the capital paid or credited as paid on the issued shares of the class . . ."

and with the relevant part of art. 13 of the articles of Hotchkiss Ordnance Co., Ltd. :—

"All provisions hereinafter contained as to general meetings shall, *mutatis mutandis*, apply to every such meeting, but so that the quorum thereof shall be members holding or representing three-fourths of the nominal amount of the issued shares of the class."

It was held by the Court of Appeal in *Hemans v. Hotchkiss Ordnance Co., Ltd.* [1899] 1 Ch. 115 that where a class meeting is held under an article in the form of art. 13 quoted above, the latter part of art. 54 of the present Table A has no application, and that the provisions as to general meetings must be applied subject to the article affecting class rights, which exists for the protection of the various classes of members concerned, and consequently the full quorum is necessary to constitute the adjourned meeting. *Hemans'* case was not referred to by Wynn Parry, J., in his judgment in *Re Hartley Baird, Ltd.*, although the latter case was in fact concerned with a meeting to alter class rights. Nevertheless, *Hemans v. Hotchkiss Ordnance Co., Ltd.*, seems to have some bearing on the *ratio decidendi* of *Re Hartley Baird, Ltd.* The essence of his lordship's judgment in the latter case was that arts. 52 and 53 provided a complete scheme. Article 53 was designed to save a meeting which had been properly convened but which could not proceed to business because no quorum was at any time present, by providing that the members present at the adjourned meeting (regardless of the magnitude of their shareholdings) should constitute the quorum. But where an article similar to art. 46 of *Hartley Baird, Ltd.*, is material the members present, even at the adjourned meeting, must hold a definite proportion of the capital. There thus seems no provision to cover the position that would arise if a class meeting was adjourned but the combined shareholding of

members attending the adjourned meeting represented less than one-third of the issued shares of the class. In such circumstances, and with the utmost respect to his lordship, it is difficult to see how the scheme of the articles is really complete, because, although his lordship said in *Re Hartley Baird, Ltd.*, that the construction he had placed on art. 52 of that company's articles resulted in no gap, nevertheless it seems that a class meeting could not be saved by art. 53.

It must however be recognised that in *Re Hartley Baird, Ltd.*, the quorum was present when the meeting began, and so no question of adjournment arose. The case is some authority on the short practical point of the interpretation of art. 53 of Table A of the Companies Act, 1948. In cases where this article applies the quorum need only be present when a general meeting proceeds to business; there is no room for any implication by which the language of art. 53 can be extended to cover the position when the meeting proceeds to vote. However, the narrowness of the point decided must not be overlooked.

On some subsequent occasion the question may arise as to what are the requirements for a quorum when there is more than one item of business at a meeting: must there be a quorum present at the time when the meeting proceeds to each individual item of business?

This question may possibly be answered by a reference to art. 54 of Table A and by applying the argument in *Re Hartley Baird, Ltd.* Article 54 operates not by reference to the time when the meeting proceeds to business, but by reference to the time appointed for the meeting. Hence it would seem that only one count is necessary, namely at the time, within half an hour from the time appointed for the meeting, when the meeting first proceeds to business: an interpretation which admittedly requires a gloss to be placed on art. 53 by the insertion of the word "first" between the words "meeting" and "proceeds."

H. N. B.

### A Conveyancer's Diary

## TREES IN THE HIGHWAY

A READER with a particular interest in the matter of the ownership of trees growing in the highway has referred to the article which appeared in this Diary some months ago on the decision of the Court of Appeal in *Tithe Redemption Commissioners v. Runcorn Urban District Council* [1954] 2 W.L.R. 518 (see 98 SOL. J. 517). He has also referred me to the case of *Stillwell v. New Windsor Corporation* [1932] 2 Ch. 155, in which it was held that the defendant authority was under a duty to the public to cut down dangerous trees standing in the highway, which was vested in it as a highway authority. This is a duty which, it seems, some highway authorities are reluctant to recognise, because of the very heavy responsibility which it must involve. The question which is now raised is whether, as a result of the recent decision, "a highway authority has a fee simple estate in the soil of the highway which entails not only a liability to pay tithe but also includes the ownership of the trees growing in that soil."

In the *Runcorn* case, the highway in question was vested in the defendant authority by virtue of s. 29 of the Local Government Act, 1929, which enacted that certain roads (of which the highway was one) "and the materials thereof . . . shall vest in the . . . council." The effect of this provision or of similar provisions in earlier legislation on the subject had frequently been discussed in many reported authorities,

such as, for example, *Mayor, etc., of Tunbridge Wells v. Baird* [1896] A.C. 434, in which Lord Macnaghten had expressed his opinion that it was to confer on the authority a statutory right in the highway in the nature of a right of property. The only question canvassed in the *Runcorn* case was whether, having regard to the provisions of the Law of Property Act, 1925, which restricted the number of legal estates ordinarily capable of existing to two, this statutory right was a sufficient interest to make its owner an "estate owner" of the highway and as such liable to pay a part of an apportioned tithe redemption annuity in respect of the highway. The answer which the Court of Appeal gave to this question was an affirmative one. But it does not seem to me that the debate in the *Runcorn* case, which was confined to the quantity of the estate which the relevant highway legislation conferred on the defendant authority in the highway, impinges to any great extent on the question which has now been put, the answer to which will depend on the physical extent of the right of property, or right in the nature of a right of property, which that legislation confers. And that in turn depends largely on the particular legislation which vested the highway in question in the authority.

In *Stillwell's* case the plaintiff's house and grounds fronted on a highway which consisted of a carriageway and of a footway between the carriageway and the boundary of the

plaintiff's land. Between the carriageway and the footway there grew certain trees. The defendant corporation *qua* highway authority served a notice on the plaintiff requiring her to remove the trees on the ground that they were a danger and an obstruction to the public in its use of the highway. The plaintiff refused to obey the notice, and the corporation thereupon cut down three of the trees. The plaintiff then issued a writ against the corporation for an injunction to restrain the corporation from committing a trespass on what she claimed was her property, namely, by cutting down the trees, and damages for the trees already cut down.

The judgment of Clauson, J., falls into two distinct parts. First, he dealt with the question apart from statute, and having found on the evidence that the highway was an ancient highway, held that the presence of the trees in it was accounted for by the fact that the authority, with the consent of the owner of the soil, whoever he was at the time, placed the trees in the roadway as a convenience and amenity for the roadway for the purpose of shade or of forming a living fence marking off the footway from the carriageway; or possibly the owner of the soil, with the permission of the authority, had planted the trees as an amenity or for his own purposes in the highway. The trees were not ancient, and there was no reason to suppose that the highway was not in existence a very long time before the trees were planted. The conclusion was, therefore, that the trees were trees which had been planted in areas over which, as an ancient highway, the public had rights of passage. The result of this conclusion was that, the public being entitled to use the whole area of the highway, the trees were an obstruction of the right of the public to use such area. If the authority was satisfied that the obstruction was a serious one, it had the right and, moreover, as suggested by some of the authorities, was under a duty to remove it; but in any case such part of the obstruction as was a danger the authority was under a positive duty to remove. On that ground the defendant corporation was entitled to succeed in the action.

But the case for the corporation had also been rested on s. 149 of the Public Health Act, 1875, the effect of which, it was argued, was that the plaintiff had no interest at all in the trees, the trees being vested by virtue of that provision in the corporation. The relevant parts of this section (which admittedly operated to vest something in the corporation, although it was disputed quite what) are as follows: "All streets . . . repairable by the inhabitants at large within any urban district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in . . . the urban authority . . . Any person who without the consent of the urban authority wilfully displaces or . . . injures the pavement stones materials fences posts or the trees in any such street shall be liable to a penalty not exceeding £5 . . . he shall also be liable in the case of injury to trees to pay to the local authority such amount of compensation as the court may award." Clauson, J., having referred to these provisions, went on to say this: "The argument is that these trees . . . are part of the street, they are things provided for the purposes of the street, the trees are planted and stand as trees in a street, an amenity of the street . . . and the argument is that under that section they vest in and are under the control of the urban authority. It is pointed out that, if the trees are injured, compensation for the injury is to be paid to the local authority: that would suggest that the property in the trees would be in the local authority. It is pointed out further that a penalty is put upon persons who without the consent of the local authority wilfully displace the trees; that would seem to imply that displacing the trees with the

consent or by arrangement with the urban authority would not be an offence, which again fits in with the suggestion that the effect of this section is to place the control and, in some part or other, the property in the trees in the local authority. In my view that is the effect of the section as regards such trees as those with which I am here dealing. In my view, for all the purposes of exercising the rights of the highway authority, these trees are to be treated as the highway authority's trees, and if they think it convenient to remove them it is proper that they should remove them. I am not called upon in this action to decide to whom the timber would belong when the trees were removed."

The first reflection which this summary of the facts and the decision in *Stillwell's* case suggests to me is that Clauson, J., a very careful judge, seems to have taken even more than usual care to relate the reasons for his conclusions to the particular facts before him. This makes the decision an extraordinarily cogent one on the particular facts, but one that affords relatively little guidance in problems arising on other circumstances. Thus it is made clear that if trees are standing in a highway over which the public has the ordinary right of passage and re-passage, the highway authority, as such, is under a duty in certain circumstances to remove them. The circumstances which cause this duty to arise, however, show how limited this obligation is: the trees must be both an obstruction and a danger to the public. Overhanging branches would not normally constitute an obstruction (*Noble v. Harrison* [1926] 2 K.B. 332), nor, it is submitted, is the mere possibility (to which all trees are subject) that the trees may lose a bough which may then fall on the highway and cause damage such a danger as would bring this duty into operation: knowledge on the part of the authority that the tree is diseased or the like would be necessary (*ibid.*). Moreover, this being a duty not imposed by statute, breach of it leading to damage to an individual would not, apparently, found an action in tort at the suit of the individual, whose remedy in the circumstances would lie only in nuisance, with the necessary consequence that the authority would only be liable if it could be shown that it had either caused or adopted the nuisance. Causing the nuisance for this purpose would mean planting the tree; what adopting the nuisance might be would be a little more difficult to determine, but, at the least, *non constat* that passive acquiescence, without knowledge of potential danger, would amount to this. And apart from an action in tort, the only remedy against the authority would be *mandamus*.

As far as the actual ownership of trees in a highway is concerned, the question which Clauson, J., had to decide was not who owned the trees, the plaintiff or the authority, but whether the authority was justified in removing them. True, in dealing with the point on s. 149 of the Public Health Act, 1875, the learned judge said that the trees should be treated as (not were) the highway authority's trees, but even this cautious statement was qualified by the words "for all the purposes of exercising the rights of the highway authority" and the refusal even to express a *scintilla* of an opinion on the ownership in the timber of the trees once they were removed.

My view is that there is nothing either in *Stillwell's* case or in s. 149 to impose any clear responsibility upon a highway authority for liability arising from the ownership of trees standing in a highway. If this is the right view of s. 149, which mentions trees (although only, from the present point of view, incidentally) *a fortiori* is this the case where the vesting in the authority occurs not under s. 149, but under s. 29 of the 1929 Act, which is completely silent on the matter of trees. Where, therefore, the authority has not itself

planted the trees it seems to me quite proper for it to refuse to accept responsibility for any damage sustained by an individual and caused by the trees, at any rate until it can

be seen how the claim is laid. And this position is not, I think, in any way affected by the recent decision in the *Runcorn* case.

"ABC"

### **Landlord and Tenant Notebook**

## **PURCHASE OF REVERSION TO BUSINESS LEASE**

THE expression "(not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein since . . .)" in para. (h) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, led, as did many of the provisions of those Acts, to more litigation than had been contemplated; and readers may be wondering whether the comparable (up to a point) enactment in s. 30 (2) of the Landlord and Tenant Act, 1954, will give rise to difficult problems. The parenthetic passage cited disqualified landlords answering to the description for claiming possession on the ground that they reasonably required the premises for their own residential purposes. To appreciate the effect of the Landlord and Tenant Act, 1954, s. 30 (2), it is necessary to set out *ib.*, s. 30 (1) (g), entitling a landlord to oppose an application for a new tenancy on the ground "subject as hereinafter provided, that on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence." Then, says subs. (2): "The landlord shall not be entitled to oppose an application on the ground specified in para. (g) of the last foregoing subsection if the interest of the landlord . . . was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in [s. 23 (1)] of this Act." (A "current tenancy" includes one continued by s. 24: see s. 26 (1)).

A good many of the decisions produced by the Rent Act provision will not be of use. The object of that exclusion was to queer the pitch of anyone who bought a tenanted house in the hope of bowling the then tenant out: "to prevent an outsider first buying a house occupied by a tenant, then giving the tenant notice to quit, and finally coming to the court for an order to get rid of the tenant," as Scott, L.J., put it in *Fowle v. Bell* [1947] K.B. 242 (C.A.); the same judge had used, in *Epps v. Rothnie* [1945] K.B. 562 (C.A.), the phrase "to protect a sitting tenant from having his house bought over his head," thus using a metaphor popularly employed by tenants aggrieved, legitimately or otherwise, by such an event. *Fowle v. Bell* showed that the exception did not apply to landlords who bought an untenanted controlled house, let it, and then sought possession under para. (h); a landlord resisting an application for a new tenancy under the Landlord and Tenant Act, 1954, s. 30 (1) (g), would likewise not be excluded by subs. (2) if the premises were empty when he bought them, because the subsection insists on the premises having been comprised in a tenancy, etc., at all times since the purchase. But, if X bought when the premises were let to A, and on A's tenancy determining he immediately re-let to A or let to B, A or B would not be able to rely on the *Fowle v. Bell* principle. Rent Act protection, it was pointed out in that case, was intended for the protection of the tenant holding at the time; this might possibly include his assignee or subsequent assignees of the term; but in the case of protected business premises, the new Act makes it clear that continuous occupation by successive tenants, not necessarily holding under the same agreement, will defeat the landlord.

Another difference is due to it having been held that the nature of rent control legislation is such as calls for popular rather than technical interpretation, and that landlords are not entitled to seek among the somewhat artificial meanings which might be attributed to the word "purchaser" in conveyancing circles—Morton, L.J., rejected the suggestion in his judgment in *Baker v. Lewis* [1947] K.B. 186 (C.A.). Then a house-hunter hit upon the bright idea of taking a concurrent lease of, instead of buying the tenanted house from, the landlord, and thus, as was established in *Powell v. Cleland* [1948] 1 K.B. 262 (C.A.), escaped the purchase bar (Asquith, L.J., putting to the tenant's counsel in the course of argument the embarrassing question whether, when he hired a bicycle, he purchased the machine). This possibility has been recognised by those responsible for the Landlord and Tenant Act, 1954, and no doubt accounts for the "was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation" in s. 30 (2).

Does this "creation" cover more than the grant of a concurrent lease? In *Baker v. Lewis*, *supra*, it was held that a devisee of a controlled and tenanted house had not, despite the necessary vesting deed, purchased it; I would submit that it would be equally unsound to say that a devise, or for that matter a deed of gift, creates the devisee's or donee's interest in the holding.

But, if some of the Rent Act authorities are, and others are not, going to be helpful, there is one point which might have, but has not been definitely or authoritatively decided under para. (h) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933: that of when exactly a landlord becomes such by purchasing. There is Irish authority for the proposition that it is the date of the contract, and not that of the conveyance, that counts, and there are reports of English county court decisions to the same effect. For rent control purposes, the question was important because the exception, read in full, runs ". . . has become landlord by purchasing . . . after 11th July, 1931 [old control originally]; 6th December, 1937 [old control after the 1938 Act]; 1st September, 1939 [new control];" for business premises purposes, it is likely to prove more important, the important date being five years before termination of current tenancy.

Take a simple case of a fixed term tenancy of, say, seven years which will expire on 29th September, 1955. The present landlord entered into a contract to purchase the reversion on 1st September, 1950, the sale was completed on 20th October of that year. The tenant makes an application for a new tenancy on 1st January, 1955. The landlord wants the premises for the purposes of his own business: was his interest purchased after the beginning of five years which end with 29th September, 1955? There seems to be something to be said on both sides. Bearing in mind that the subsection does not require that he should have become landlord by purchasing, it might be argued that the contract to purchase, though it did not make him landlord, amounted to a purchase of the interest. To which the answer might be that that interest was one thing, the interest acquired by the conveyance another; and the subsection says "the interest." R. B.

## HERE AND THERE

### MODERN METHODS

ONE of the last gestures of the judges in Trinity Term was to organise a mass assault on the divorce lists containing 123 undefended petitions. So seven courts spent the last day before the Christmas vacation disposing of them at an average rate of 8 d.p.h. (or decrees per hour). If streamlining, mechanisation and rationalisation ever convert the courts to the factory efficiency in which some reformers would see the embodiment of procedural perfection, we must get used to such terms (and like them). The Bench would be assessed in terms of judge power. Counsel might survive under the disguise of some such circumlocution as "submission operatives." Fees and charges would become rates for the job, regulated with as much strictness and as utterly unintelligible a complexity as industrial rates of pay. The idea of slot machine divorces actually got as far as a Bill presented to the legislature of Nevada five years ago. A petitioner would be given a key with which to punch a time clock arrangement in the machine every day for forty-two days, thereby establishing the statutory period of qualifying residence. On the last day a green light would appear as a signal to insert the fee of a hundred silver dollars which would promptly release a duly authenticated divorce decree. Besides streamlining legal procedure the Bill was designed to revive the Nevada silver mining industry. Pending the day when Lord Merriman introduces a similar Bill into our own Legislature, our divorces are still laboriously fashioned by the outmoded methods of handicraft, though modern impatience and vulgarisation and lack of appreciation of beauty in intricate design forces the craftsmen to work faster and yield to time-saving devices. Those lovely baroque masterpieces, divorces by Act of Parliament, splendid monuments of an aristocratic age, are mere museum curiosities. Even the solid 19th century mahogany furniture with which Lord Campbell and other modernisers a century ago were fitting out our divorce law is now a thing of the far past. Just so in a future which seems to belong to the conveyor belt, the automatic machine or maybe the electronic brain, our divorce judges, each in his own little workshop, albeit fitted with some excellent up-to-date machinery, will seem incredibly quaint, something to be reproduced by waxwork tableau in a folk museum.

### UNCHARTED SEAS

ONCE you sail out of the well defined anchorage of marriage sacramental and indissoluble (where the moorings are recognised as being God's business) and set course into the uncharted seas of divorce, the voyage becomes curiously indeterminate, partly because of the nature of the seas, partly because of the doubt whose business it is to navigate or, indeed, to whom the ship belongs. Is it a luxury yacht with youth at the prow and pleasure at the helm and everyone tumbling in and out of one another's cabins just as they please? Or is it a ship of State, with duty at the prow and order at the helm, in which passengers and crew are paired off in their bunks and their watches as the captain and officers may direct? If it turns out to be the latter a good many of the adventuring mariners may wish they'd stayed in harbour after all. The issue becomes inextricably confused because divorce law reformers set out, for the most part, with only the haziest notions of where they want to get to. They start with a vague general feeling that it is a terrible hardship (as it is) to ask two people to go on living together when, for some reason or another, their marriage is a hopeless failure, and they are afterwards startled to discover that half the

implications of marriage are a terrible hardship, if you choose to look at them in that light, and that there will come a point in almost every marriage when one or both of the partners will be seriously tempted to look at them in just that light. Where do they go from there? Is one to switch spouses as easily as one changes trains at Charing Cross or Oxford Circus? Or is there to come a point at which, hardship or no hardship, the State steps in (just like Almighty God only without His authority) to offer an arbitrary "Thou shalt not"? In the United States, for example, earnest people get rather worried when they see beautiful and newsworthy ladies practising progressive polygamy with, apparently, no legal limit to the number of husbands they can acquire and discard. It has been suggested that, by analogy to the criminal law in some countries, the fourth sentence, say, should be treated as a life sentence.

### THOSE LITTLE THINGS

BUT if it's really pity for human frailty and irritability that actuates the divorce law reformers, they have no business to get severe and even sanctimonious about the apparent triviality of the reasons why men and women decide that they can't live together another minute. Great differences may be settled by discussion, compromise and treaty. It is precisely the innate peculiarities and mannerisms, largely unconscious, undiscussable and incorrigible, that drive another person frantic with irritation. The latest addition to the vast jurisprudence of the practices held judicially by the courts of civilised countries to make married life intolerable, comes from Copenhagen, where a man has been granted a divorce because his wife always squeezed his toothpaste tube in the middle after he had carefully rolled it up from the lower end. This the judge held to amount to cruelty, because the husband had shown himself unusually sensitive to this habit of hers. Probably that decision would be followed with approval and even enthusiasm in Reno where men have been divorced for persistently sucking a smelly clay pipe, for playing nothing but modern dance music on the radio when a cultivated wife wanted at least a share of classical music, for playing the saxophone all the evening until midnight and even for wearing excessively gaudy neckties. For Americans, at any rate, marriage for better or for worse need not include anything as bad as all that. Similarly the status of domestic animals has proved a stumbling block by the matrimonial hearth. In Michigan a wife has been divorced for demanding that her husband should kiss the cat while he was eating his dinner. In Detroit a husband has been divorced because he developed the habit of kissing the dog as he went out to work and giving his wife a pat. No doubt the Tennessee husband went beyond normal domestic usage in any view by putting a snuff box on his wife's head and shooting it off. She divorced him. However, the most remarkable sidelight, surely, on the American way of life was the case of the amateur tattooist in Texas who insisted on practising on his wife. While he contented himself with adorning her thighs with anchors, hearts and Cupid's darts she apparently submitted with reasonably good grace to those symbols of affection. It was when in a burst of civic consciousness he proposed to adorn her back with the first verse of "The Star Spangled Banner," that she revolted and successfully petitioned for divorce. Now that one comes to think of it, she was lucky not to be counter-charged with un-American sentiments and even Communist leanings.

RICHARD ROE.

## NOTES OF CASES

*The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note*

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CRIMINAL LAW: "PUBLIC MISCHIEF" CHARGE:  
MISDIRECTION

Joshua v. R.

Lord Oaksey, Lord Keith of Avonholm and Mr. L. M. D. de Silva

7th December, 1954

This was an appeal from a judgment of the Court of Appeal for the Windward Islands and Leeward Islands, dated 7th July, 1953. The appellant, Ebenezer Theodore Joshua, a member of the Legislative and Executive Councils of St. Vincent, was indicted on three counts, the first and third charging sedition, and the second charging a public mischief, alleging that he on 26th November, 1952, at Kingstown, St. Vincent, "did by means of certain false statements in a public speech to the effect that the police were scheming politically and storing up a veritable arsenal at headquarters to shoot down the people when they decide to fight for their rights, agitate and excite certain sections of the public against the police, to the prejudice and expense of the community." The trial judge (Cools-Lartigue, J.) in his charge to the jury said: "I direct you, as a matter of law, that if you find that he did utter the words complained of he is guilty of the offence of effecting a public mischief." On the first count the jury failed to agree, and were discharged from returning a verdict; on the third count the appellant was acquitted. He was convicted on the second count of "effecting a public mischief contrary to the common law," and was bound over for two years. His appeal was dismissed by the Court of Appeal.

LORD OAKSEY, giving the judgment, said that the following questions had been argued. First, whether apart from cases of conspiracy there was any common-law offence of effecting a public mischief. Secondly, whether the trial judge's direction was right that the jury must as a matter of law find the appellant guilty if they found that he spoke the words charged. Thirdly, whether the two offences of sedition and effecting a public mischief could be charged in respect of one speech. And fourthly, whether the appellant could be found guilty on an indictment charging that he did by false statements agitate and excite certain sections of the public when no evidence was given that any section of the public were agitated or excited by the appellant's speech. The first question was one of general importance on which there were conflicting views by judges of great eminence, but as it was not necessary to the decision of the present appeal their lordships did not propose to deal with it. On the second question their lordships were of opinion that it was for the judge to direct the jury as to the elements of the crime of effecting a public mischief (assuming that such a crime existed) and to direct them on the facts if he thought there was evidence to go to the jury, and it was for the jury to find whether the appellant was guilty upon those facts. It was a misdirection to tell the jury as a matter of law that they must convict the appellant if they found he had spoken the words alleged. To do so was, in their lordships' opinion, to usurp the function of the jury. On the third question their lordships thought that it was highly undesirable that a prisoner should be tried on counts that he made a seditious speech and also that he effected a public mischief by making the said speech, yet that was what happened in the present case, with the result that the jury found the appellant not guilty of sedition but guilty of effecting a public mischief by making a speech the mischief of which was its allegedly seditious nature. On the fourth question their lordships were of opinion that on the indictment as framed there was no evidence to go to the jury. For these reasons their lordships would humbly advise Her Majesty that the appeal ought to be allowed and the conviction quashed. There would be no order as to costs as there were in their lordships' view no such circumstances as to justify a departure from the ordinary rule in criminal cases.

APPEARANCES: *Ralph Millner* (Garber, Vowles & Co.); *J. G. Le Quesne* (Charles Russell & Co.).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 28]

CARRIAGE OF GOODS: LIABILITY OF MASTER FOR  
THEFT BY SERVANT

United Africa Co., Ltd. v. Saka Owoade

Lord Oaksey, Lord Keith of Avonholm and Mr. L. M. D. de Silva

13th December, 1954

Appeal from the West African Court of Appeal.

In February, 1948, the respondent, a transport contractor in Lagos, went to the premises of the appellants, general merchants in West Africa, and solicited employment to carry goods from Lagos to the appellants' branches up-country. He introduced to the appellants' employees two men who he said were his driver and clerk and stated that when the appellants had goods for him to carry they should give them to the driver and clerk. The clerk attended at the appellants' premises on two occasions in March and April, 1948, and on each occasion was given certain goods, namely, cigarettes and brandy, the total value of which was £4,777 9s. 4d., for carriage to two branches up-country. The goods were never delivered to the two branches, and the lorry driver and clerk were subsequently convicted of stealing them. The appellants claimed from the respondent the value of the goods. The trial judge held that the goods had been delivered to the respondent's servants in the course of their employment and stolen by them in such capacity, and he gave judgment for the appellants. On appeal, the West African Court of Appeal held that the form of the pleading was such that the appellants were only entitled to rely upon non-delivery by a common carrier, and that as they had not proved that the respondent was a common carrier their case must fail. On the appellants' application for leave to appeal to the Privy Council the Court of Appeal ordered that as a condition the appellants "do enter into good and sufficient security . . . in the sum of £500 . . ." The appellants duly paid that sum into court, but the respondent took the point that the condition could only be fulfilled by the provision of a bond and that payment of the sum was not a compliance with the court's order. The Court of Appeal upheld the respondent's contention and refused leave to appeal to the Privy Council. On 9th April, 1952, the appellants were granted special leave by the Board to appeal against both the substantive judgment and the order refusing leave to appeal.

LORD OAKSEY, delivering the judgment, said that the facts stated in the statement of claim were sufficient to raise the question of the respondent's liability apart from any liability as a common carrier. The respondent had argued that a principal or master could not be liable for his agent's or servant's fraud unless the principal or master had been himself negligent. That argument was based principally on *Cheshire v. Bailey* [1905] 1 K.B. 237. In their lordships' opinion *Lloyd v. Grace Smith & Co.* [1912] A.C. 716 established the principle that a master was liable for his servant's fraud perpetrated in the course of the master's business whether the fraud was committed for the master's benefit or not. The only question was whether the fraud was committed in the course of the servant's employment. Their lordships did not find it necessary to decide whether *Cheshire's* case, *supra*, was distinguishable on its facts from, or had been overruled by, *Lloyd v. Grace Smith & Co.*, *supra*. In the present case the fair inference from the facts proved was that the goods were committed expressly to the respondent's servants and that they converted the goods whilst they were on the journey which the respondent had undertaken to carry out, and the conversion was therefore in the course of the employment of the respondent's servants. The question as to the adequacy of security might have some general importance. It was too narrow a construction of the words of the order to treat the actual deposit of the £500 as insufficient on the ground that the appellants did not "enter into good and sufficient security." The sum of money was as good as, if not better than, a bond, and on the strict wording of the order only the appellant company itself could enter into security, and in cases where the appellant was not a person of substance the bond would be of much less

value than the actual sum. Appeals allowed, and judgment entered for the appellants for £4,777 9s. 4d. The respondent must pay the costs before the Board and in the courts below.

APPEARANCES: *T. G. Roche* (Linklaters & Paines); *Phineas Quass, Q.C.*, and *S. N. Bernstein* (*A. L. Bryden & Williams*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 13]

#### CHARITY: WHETHER TRUST FOR AGRICULTURAL PURPOSES ONLY

##### *Hadaway v. Hadaway and Another*

Viscount Simonds, Lord Morton of Henryton and Lord Somervell of Harrow

13th December, 1954

Appeal from the Court of Appeal for the Windward Islands and Leeward Islands.

By his will, dated 28th November, 1944, the testator, who died on 2nd June, 1946, after appointing William Horatio Boardman and Wilmot Henry Hadaway to be his executors and trustees, devised and bequeathed to them all his property upon trust "as to the residue of my personal estate . . . for the purpose of establishing and founding a bank," and by cl. 8 of the will declared that "the objects of the bank will be primarily to assist the planters and agriculturalists of St. Vincent by way of loans at a sufficiently low rate of interest as is compatible with the proper operation of the bank." The residuary estate amounted to about £80,000. An originating summons was taken out, in which the executors were plaintiffs and the present respondent, the Attorney-General of the Windward Islands, was defendant, to have it determined whether the trust in cl. 8 was a valid and effectual public or charitable trust or failed for uncertainty or any other reason. The Chief Justice, before whom the summons first came, held that the will did not effectually create a charitable trust, and declared that the testator's residuary estate was divisible among the next of kin as upon an intestacy. On appeal, the majority of the Court of Appeal for the Windward Islands and Leeward Islands, allowing the appeal, held in effect that the trust was charitable.

VISCOUNT SIMONDS, delivering the judgment, said that the only question was whether the trust set out in cl. 8 was a valid trust. It appeared to their lordships to be impossible to regard as charitable a trust for the granting of loans at a low rate of interest to a class of persons carrying on a particular trade or business or profession, unless at least there was a condition that loans so made should be employed for a purpose which could itself be regarded as charitable. Their lordships accepted as an accurate statement of the law the *dictum* of Lawrence, L.J., in *Inland Revenue Commissioners v. Yorkshire Agricultural Society* [1928] 1 K.B. 611, at p. 636, that "the general improvement of agriculture is a charitable purpose," but it appeared to them impossible to regard the will here as creating a trust for the general improvement of agriculture only or for such a purpose and purely ancillary purposes only. If the trust fund might be devoted either to charitable or to non-charitable purposes the gift was invalid. That was a question of construction. Their lordships entertained no doubt that the ambit of the trust was wide enough to include loans which could not fairly be described as being for the promotion of agriculture or as being ancillary to that purpose, and that it was only by inserting restrictive words that loans could be so confined. It was clear that it would be competent for the directors of the bank to make loans to planters in any financial emergency whether due to crop failure or other farming disaster or to some personal distress. But such loans which might or might not be used for agricultural purposes could not properly be described as made for the general improvement of agriculture however much individual planters might benefit. On a proper construction of the will, restrictive words could not be imported into the terms of the trust, and without them the trust was invalid. The appeal would be allowed. The costs of all parties to this appeal should be paid as between solicitor and client out of the testator's estate.

APPEARANCES: *L. M. Jopling* (*Hy. S. L. Polak & Co.*); *Pascoe Hayward, Q.C.*, and *Denys Buckley* (*Burchells*); *Peter Foster* (*Druces & Atlee*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [1 W.L.R. 16]

#### COURT OF APPEAL

##### PRACTICE: PROBATE: PARTICULARS OF ALLEGATION THAT TESTATOR WAS NOT OF SOUND MIND

##### *In re Reynolds, deceased*; *Pearkes v. Reynolds*

Denning and Morris, L.JJ. 3rd December, 1954

Appeal from Davies, J.

Order 19, r. 25A, of the Rules of the Supreme Court provides: "In the Probate actions it shall be stated with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further, where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial." In an action in which the plaintiff sought probate of a will of which he was an executor, the defendant pleaded that the testatrix at the time that she made the will was not of sound mind, memory or understanding. In reply to the plaintiff's application for particulars giving specific incidents relied upon, with dates and places, the defendant gave at considerable length incidents on which he based his defence, but was unable, in most cases, to specify the dates. The plaintiff obtained an order for further and better particulars from Davies, J., affirming an order of the registrar. The defendant appealed.

DENNING, L.J., said that before the coming into force of r. 25A in 1901, it was not the practice to order particulars of unsoundness of mind: the rule reflected the view of Cotton, L.J., in *Salisbury (Lord) v. Nugent* (1883), 9 P.D. 23, that it was reasonable to require a general statement of the facts relied on. The defendant's original pleading had alleged, at considerable length, that the deceased had been of unstable temperament and had suffered from mental deterioration owing to excessive consumption of alcohol. Voluminous particulars of that allegation had been given, stating that the deceased had been in the habit of flying into unreasonable rages, swearing violently in public, kissing the waiters in restaurants, and sending for the police to "sling out" guests whom she was entertaining at her house. The plaintiff now required a mass of further particulars relating to dates, places and occasions of the unreasonable rages, swearing in public, kissing the waiters, etc. The substance of the case, as required by the rule, had already been stated, and the order made went far beyond what the rule required. The appeal should be allowed.

MORRIS, L.J., agreed. Appeal allowed.

APPEARANCES: *A. H. Ormerod* (*Arnold, Fooks, Chadwick and Co.*); *A. R. Ellis* (*Pettiver & Pearkes*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 12]

##### PRACTICE: ALLEGATION OF CONSPIRACY TO SLANDER: APPLICATION TO ALLEGE SPECIAL DAMAGE

##### *Ward v. Lewis and Others*

Denning and Morris, L.JJ. 3rd December, 1954

Appeal from Gerrard, J.

In an action for slander the plaintiff, an osteopath, in answer to the defendants' request for particulars of damage, replied that no special damage was alleged. In his pleadings he alleged conspiracy between the defendants "wrongfully to make and publish false and malicious oral and written statements defamatory of" [him]. That allegation of conspiracy was struck out by the master on the ground that it omitted any allegation of damage—an essential averment. In those circumstances the plaintiff obtained from the master leave to amend the pleadings by substituting an allegation of conspiracy by the defendants to defame, whereby he had suffered damage by reason of a severe falling off in his practice. Gerrard, J., affirmed the master's order, and the defendants appealed.

DENNING, L.J., said that in the proposed amendment no connection was shown between the slanders and the damage: there was no allegation, as was necessary, that the slanders were authorised by the defendants to be republished, or were likely to be or in part had been republished. In such an allegation there must be a connection between the conspiracy and the damage. When a tort has been committed by two or more persons, an allegation of a prior conspiracy to commit it added nothing, as the conspiracy merged in the tort, and a party could not gain an added advantage by charging conspiracy. No

nexus had been alleged between the falling off in the practice and the slanders alleged. The appeal must be allowed.

MORRIS, L.J., agreed. Appeal allowed.

APPEARANCES: B. Gillis, Q.C. (Zeffertt, Heard & Morley Lawson); H. P. Milmo (Allen & Overy); C. Duncan (Summer and Co.).

[Reported by F. R. Dymond, Esq., Barrister-at-Law]

[1 W.L.R. 9]

# **BANKRUPTCY: ORDER EXTENDING TIME FOR APPEAL ON EX PARTE APPLICATION SET ASIDE**

**In re Vanbergen (a bankrupt); ex parte The Trustee v. Vanbergen**

Jenkins and Hodson, L.J.J., and Vaisey, J. 7th December, 1954  
Appeal from Mr. Registrar Cunliffe.

On 21st June, 1954, the trustee in bankruptcy of a debtor served on the wife of the debtor, who claimed to be a creditor entitled to prove in the bankruptcy, a notice of rejection of her proof of debt. On 19th July, 1954, one week after the expiry of the twenty-one-day period allowed for appeals, the creditor applied *ex parte* to the registrar for extension of time for appeal; and on 20th July the registrar made an order extending the time to 3rd August. On 22nd October, the trustee applied to the registrar to have the order set aside. The registrar dismissed that motion on 26th October without considering the merits. The trustee appealed.

JENKINS, L.J., on the trustee's submission that the order extending time for the creditor's appeal ought not to have been made *ex parte*, said that the effect of the expiry of the time limited by r. 261 of the Bankruptcy Rules, 1952, was conclusively to determine that the creditor was not entitled to share in the bankrupt's assets, and accordingly the trustee, in his representative capacity, was a person who would be prejudiced by an order extending the time for appealing, since it would deprive him of a vested interest. His lordship was satisfied, having regard to the relevant provisions of the Bankruptcy Act, 1914, and of the rules, that the order extending time ought not to have been made *ex parte* and that the registrar ought, if he had strictly adhered to the proper practice, to have set it aside, though it might be open to him to hear the matter *de novo* in the presence of both parties, and to extend the time for appealing if good cause were shown. The appeal should be allowed and the order of 20th July set aside. On the trustee's submission that on the true construction of the Act and the rules, an application for the extension of time for appealing from a rejection of proof was a matter which should be dealt with, not by the registrar, but by the judge in bankruptcy in court, his lordship could find no sufficiently clear indication in the rules to enable the court to hold that such applications were not proper to be dealt with by the registrars in bankruptcy, and according to long-established practice registrars had consistently entertained these matters. But it might be worth consideration by the judges of the Chancery Division exercising the bankruptcy jurisdiction whether the practice in this respect might not advantageously be altered by a suitable direction, so that applications to extend time for appeals should be heard by the judge who heard the appeal itself.

HODSON, L.J., delivered a concurring judgment.

VAISEY, J., agreed. Appeal allowed. Leave to appeal refused.

APPEARANCES: Muir Hunter (Ward, Bowie & Co.); I. H. Jacob (S. Rutter & Co.).

[Reported by Miss M. M. Hill, Barrister-at-Law]

[1 W.L.R. 20]

## **CHANCERY DIVISION**

### **SETTLEMENT: UNDUE INFLUENCE: NO INDEPENDENT ADVICE**

**Bullock v. Lloyds Bank, Ltd., and Another**

Vaisey, J. 30th November, 1954

Action.

On attaining the age of twenty-one on 11th June, 1940, the plaintiff, then a spinster, became absolutely entitled to a sum of £12,000 under the will of her deceased mother. On 12th July, 1940, the plaintiff, at the request of her father, and with no advice other than that given by her father and his solicitor, executed a voluntary deed of settlement whereby she assigned to the trustee of the settlement the interest she had received

under her mother's will without power of revocation save at the absolute discretion of the trustee. Under the settlement the plaintiff took a life interest in the settled fund and the deed contained, *inter alia*, a provision that upon her death, and in default of an appointment in favour of any issue or husband who might survive her, the fund was to be held on the statutory protective trust for the benefit of her father and her brother for their respective lives. The evidence established that in 1949 the plaintiff became aware that the validity of the deed might be brought into question. She was desirous of obtaining the capital of the settled fund and thereupon she endeavoured from time to time, but without success, to persuade the trustee to revoke the trusts of the settlement. On 27th February, 1953, the writ in the action was issued in which the plaintiff sought a declaration that the deed of settlement was void and an order on the trustee for its delivery up for cancellation.

VAISEY, J., said that he could acquit the father and the father's solicitor of any lack of honesty or integrity in the transaction, but the plaintiff had not understood that it was not necessary for her to execute a settlement at all, and had not properly understood the provisions of the settlement, which in some respects were defective. The expression "undue influence" was not confined to cases where influence was exerted to confer a benefit on the person exerting it, but extended to cases in which a person of imperfect judgment came under the direction of one who possessed not only greater experience but also the force inherent in the relationship of parent and child. The influence of the father, exercised personally and through his solicitor, was "undue" in the sense that it necessarily had a constraining effect on the mind of the plaintiff, who ought to have been placed in the hands of someone who was constrained to secure her interests and hers alone. It was doubtful whether the plaintiff realised that her father and brother had no right to accept benefits from her. Such a settlement could only be justified after prolonged consideration and independent advice, neither of which had been forthcoming. It had been said that the plaintiff had been guilty of *laches* and acquiescence, but in the four years between the discovery by the plaintiff that the settlement was open to objection and the issue of the writ, the plaintiff had made unsuccessful attempts to persuade the trustee bank to revoke the settlement, as they had power to do. The plaintiff was entitled to have the settlement revoked. Judgment for the plaintiff.

APPEARANCES: C. Fletcher-Cooke (Hall, Brydon, Egerton and Nicholas); E. Blanshard Stamp (Lithgow, Pepper & Eldridge).

[Reported by F. R. Dymond, Esq., Barrister-at-Law]

[2 W.L.R. 1]

## **QUEEN'S BENCH DIVISION**

### **PRACTICE NOTE**

#### **RATING: APPEAL TO VALUATION COURT WITHDRAWN: PERSONS ENTITLED TO BE HEARD**

**In re Brixham Urban District Council**

**In re Salcombe Urban District Council**

**In re Totnes Urban District Council**

Hilbery, Lynskey and Parker, J.J. 4th October, 1954

Applications *ex parte* for leave to apply for orders of *mandamus*.

In the application by the Brixham Urban District Council the following were among the facts relied upon: A local valuation officer made a proposal to alter the valuation list and, objection having been made, served notice of appeal on the local valuation court under s. 48 of the Local Government Act, 1948. The applicants, the rating authority, were in complete agreement with the valuation officer's proposal and therefore they took no steps themselves. When the appeal was due to be heard the valuation officer wrote to the clerk of the valuation court withdrawing his appeal, and when the court sat he did not appear. The court refused to hear the rating authority or to determine the appeal, and the rating authority applied for leave to apply for an order of *mandamus* directing the valuation court to hear and determine the appeal of the valuation officer on the grounds that, once notice of appeal had been given, a duty was imposed by s. 48 (1) on the valuation court to hear it and that, since subs. (3) entitled certain persons to appear as parties to the appeal, those persons had a right to have the appeal heard. The other two applications turned upon the same point.

During the course of the argument HILBERY, J., said that the appellant was in control of whether he went on with the appeal

or not; the Act did not give other persons the right to have the appeal heard, but certain rights on the hearing of the appeal, and when the appellant abandoned his appeal there was nothing upon which those persons had a right to be heard. Applications refused.

APPEARANCES: *G. D. Squibb (Sharpe, Pritchard & Co., for T. Owen Davies, Brixham).*

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 5]

#### LANDLORD AND TENANT: RENT RESTRICTION: PROMISE BY TENANT TO GIVE POSSESSION FOR VALUABLE CONSIDERATION

**Rajenback v. Mamon**

Wynn Parry, J. (sitting as an additional judge).

7th December, 1954

Action for a declaration.

The plaintiff, the tenant of a rent restricted flat, agreed in May, 1954, with the defendant, his landlord, that if the plaintiff should give up possession of the flat on or before the end of 1954 he should be entitled to be paid £300 by the defendant on so doing. On the defendant later repudiating this agreement, the plaintiff brought an action claiming a declaration in accordance with its terms. It was contended for the defendant that the agreement was void and unenforceable on the grounds of public policy and want of mutuality, and as being an attempt to contract out of the Rent Acts.

WYNN PARRY, J., said that the defendant contended that the agreement was unenforceable on the ground laid down in *Barton v. Fincham* [1921] 2 K.B. 291, but that case did no more than give effect to the limitation on the jurisdiction of the court to make an order for possession imposed originally by s. 1 (5) of the Act of 1920; it did not deal with questions of public policy. The agreement was one of promise for promise, and there was said to be want of mutuality, because the defendant landlord could not enforce it. On the other hand, if the plaintiff, as he intended, gave up possession at the end of the year, the defendant would obtain all he had sought by the agreement. No authority had been cited which showed that the agreement was against public policy, and there were many cases in which Parliament had to some extent robbed contracts of mutuality. There would be a declaration that if the plaintiff gave up possession on or before 1st January, 1955, he would be entitled to be paid £300 by the defendant on that date. Declaration accordingly.

APPEARANCES: *Montague Waters (Cyril Rallon); D. Ackner (Stanley Attenborough & Co.).*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

[2 W.L.R. 21]

#### COURT OF CRIMINAL APPEAL

##### ACCESSORY BEFORE THE FACT: DIRECTION TO JURY: KNOWLEDGE THAT PARTICULAR CRIME IN VIEW

**R. v. Bullock**

Lord Goddard, C.J., Cassels and Devlin, JJ.

6th December, 1954

Appeal against conviction.

The appellant was charged on two counts alleging breaking and entering on two separate occasions houses in the country, one house being in Leicestershire and the other in Wiltshire. There was sufficient evidence to suggest that the appellant had some connection with both crimes and on each occasion a car hired by him was seen in the vicinity of the house broken into. The appellant's defence was an alibi and at the trial the case for the prosecution and the summing-up proceeded on the basis that he was concerned in the breaking and entering. After the jury had been absent for about three-quarters of an hour they returned and asked the judge what was the law regarding a person who had knowledge of the fact that his car was being used for an unlawful purpose. The judge directed the jury, in effect, that if they were not satisfied that the appellant was present at the house broken into but found that to his knowledge the car was being driven by a thief or thieves, and he knew beforehand that it was going to be used for that purpose, then the appellant would be an accessory before the fact. The appellant was convicted of being an accessory before the fact and, relying on *R. v. Lomas* (1913), 9 Cr. App. R. 220, he appealed on the ground that the judge's direction was, in the circumstances, inadequate.

DEVLIN, J., said that mere knowledge that the principal intended to commit crime was not of itself enough to constitute an accessory before the fact, but in the circumstances of the case once it was plain that the appellant had hired the car and had control of it, it was equally plain, if he knew that it was being used, that he must also have permitted its use; he must have lent it for that purpose and that was certainly enough. *R. v. Lomas* was upon that point quite different. The second part of the headnote to *R. v. Lomas*, "there must be some particular crime in view," was not derived from anything contained in the judgment and there was nothing to show that that was the decisive point taken by the court. The direction given in the present case must be considered with the background of the facts and the appellant's defence. Once the jury were satisfied that he did know that the car was being used for an unlawful purpose there was no need to give an elaborate direction as to whether the unlawful purpose was merely a general purpose or the intent to commit one or other of the specific crimes. In the circumstances the direction given was quite adequate. Appeal dismissed.

APPEARANCES: *F. H. Lawton (Sampson & Co.); J. A. Grieves (B. F. Chapman, Leicestershire).*

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 1]

## SURVEY OF THE WEEK

### STATUTORY INSTRUMENTS

**Baking Wages Council (Scotland) Wages Regulation (Amendment) Order, 1954.** (S.I. 1954 No. 1684.) 6d.

**County of Gloucester (Electoral Divisions) Order, 1954.** (S.I. 1954 No. 1722.)

**County of Surrey (Electoral Divisions) (No. 2) Order, 1954.** (S.I. 1954 No. 1695.)

**Counties of Berwick and Roxburgh Water Order, 1954.** (S.I. 1954 No. 1692 (S. 187).)

**East Worcestershire Water Order, 1954.** (S.I. 1954 No. 1705.)

**Fustian Cutting Wages Council (Great Britain) Wages Regulation Order, 1954.** (S.I. 1954 No. 1685.) 5d.

**General Waste Materials Reclamation Wages Council (Great Britain) Wages Regulation Order, 1954.** (S.I. 1954 No. 1696.) 6d.

**International Organisations (Immunities and Privileges of the North Atlantic Treaty Organisation) Order, 1954.** (S.I. 1954 No. 1471.) 6d.

**Juvenile Courts (Constitution) Rules, 1954.** (S.I. 1954 No. 1711 (L. 21).) 5d.

**Kitchen Waste (Licensing of Private Collectors) (Revocation) (Scotland) Order, 1954.** (S.I. 1954 No. 1716 (S. 190).)

**Kuwait (Amendment) Order, 1954.** (S.I. 1954 No. 1702.)

**Landlord and Tenant (Notices) (No. 2) Regulations, 1954.** (S.I. 1954 No. 1714.) 6d.

As to these regulations, see p. 18, *ante*.

**Metropolitan Water Board (Ashford Common) Order, 1954.** (S.I. 1954 No. 1700.)

**Miscellaneous Controls (Revocation) Order, 1954.** (S.I. 1954 No. 1693.)

**National Assistance (Determination of Need) Amendment Regulations, 1954.** (S.I. 1954 No. 1704.)

**New Forest (Confirmation of Byelaws) (No. 2) Order, 1954.** (S.I. 1954 No. 1697.)

**North of Scotland Hydro-Electric Board (Constructional Scheme No. 26) Confirmation Order, 1954.** (S.I. 1954 No. 1707 (S. 188).)

**Northern Rhodesia (No. 2) Order in Council, 1954.** (S.I. 1954 No. 1703.)

**Paper (Miscellaneous Controls) (Amendment) Order, 1954.** (S.I. 1954 No. 1694.)

**Police (Scotland) Amendment (No. 2) Regulations, 1954.** (S.I. 1954 No. 1715 (S. 189).)

**Probation (No. 3) Rules, 1954.** (S.I. 1954 No. 1719 (L. 22).) 5d.

nexus had been alleged between the falling off in the practice and the slanders alleged. The appeal must be allowed.

MORRIS, L.J., agreed. Appeal allowed.

APPEARANCES: B. Gillis, Q.C. (Zeffertt, Heard & Morley Lawson); H. P. Milmo (Allen & Overy); C. Duncan (Summer and Co.).

[Reported by F. R. Dymond, Esq., Barrister-at-Law] [1 W.L.R. 9]

# **BANKRUPTCY: ORDER EXTENDING TIME FOR APPEAL ON EX PARTE APPLICATION SET ASIDE**

## ***In re Vanbergen (a bankrupt); ex parte The Trustee v. Vanbergen***

Jenkins and Hodson, L.JJ., and Vaisey, J. 7th December, 1954  
Appeal from Mr. Registrar Cunliffe.

On 21st June, 1954, the trustee in bankruptcy of a debtor served on the wife of the debtor, who claimed to be a creditor entitled to prove in the bankruptcy, a notice of rejection of her proof of debt. On 19th July, 1954, one week after the expiry of the twenty-one-day period allowed for appeals, the creditor applied *ex parte* to the registrar for extension of time for appeal; and on 20th July the registrar made an order extending the time to 3rd August. On 22nd October, the trustee applied to the registrar to have the order set aside. The registrar dismissed that motion on 26th October without considering the merits. The trustee appealed.

JENKINS, L.J., on the trustee's submission that the order extending time for the creditor's appeal ought not to have been made *ex parte*, said that the effect of the expiry of the time limited by r. 261 of the Bankruptcy Rules, 1952, was conclusively to determine that the creditor was not entitled to share in the bankrupt's assets, and accordingly the trustee, in his representative capacity, was a person who would be prejudiced by an order extending the time for appealing, since it would deprive him of a vested interest. His lordship was satisfied, having regard to the relevant provisions of the Bankruptcy Act, 1914, and of the rules, that the order extending time ought not to have been made *ex parte* and that the registrar ought, if he had strictly adhered to the proper practice, to have set it aside, though it might be open to him to hear the matter *de novo* in the presence of both parties, and to extend the time for appealing if good cause were shown. The appeal should be allowed and the order of 20th July set aside. On the trustee's submission that on the true construction of the Act and the rules, an application for the extension of time for appealing from a rejection of proof was a matter which should be dealt with, not by the registrar, but by the judge in bankruptcy in court, his lordship could find no sufficiently clear indication in the rules to enable the court to hold that such applications were not proper to be dealt with by the registrars in bankruptcy, and according to long-established practice registrars had consistently entertained these matters. But it might be worth consideration by the judges of the Chancery Division exercising the bankruptcy jurisdiction whether the practice in this respect might not advantageously be altered by a suitable direction, so that applications to extend time for appeals should be heard by the judge who heard the appeal itself.

HODSON, L.J., delivered a concurring judgment.

VAISEY, J., agreed. Appeal allowed. Leave to appeal refused.

APPEARANCES: Muir Hunter (Ward, Bowie & Co.); I. H. Jacob (S. Rutter & Co.).

[Reported by Miss M. M. Hill, Barrister-at-Law] [1 W.L.R. 20]

# **CHANCERY DIVISION**

## **SETTLEMENT: UNDUE INFLUENCE: NO INDEPENDENT ADVICE**

### ***Bullock v. Lloyds Bank, Ltd., and Another***

Vaisey, J. 30th November, 1954

Action.

On attaining the age of twenty-one on 11th June, 1940, the plaintiff, then a spinster, became absolutely entitled to a sum of £12,000 under the will of her deceased mother. On 12th July, 1940, the plaintiff, at the request of her father, and with no advice other than that given by her father and his solicitor, executed a voluntary deed of settlement whereby she assigned to the trustee of the settlement the interest she had received

under her mother's will without power of revocation save at the absolute discretion of the trustee. Under the settlement the plaintiff took a life interest in the settled fund and the deed contained, *inter alia*, a provision that upon her death, and in default of an appointment in favour of any issue or husband who might survive her, the fund was to be held on the statutory protective trust for the benefit of her father and her brother for their respective lives. The evidence established that in 1949 the plaintiff became aware that the validity of the deed might be brought into question. She was desirous of obtaining the capital of the settled fund and thereupon she endeavoured from time to time, but without success, to persuade the trustee to revoke the trusts of the settlement. On 27th February, 1953, the writ in the action was issued in which the plaintiff sought a declaration that the deed of settlement was void and an order on the trustee for its delivery up for cancellation.

VAISEY, J., said that he could acquit the father and the father's solicitor of any lack of honesty or integrity in the transaction, but the plaintiff had not understood that it was not necessary for her to execute a settlement at all, and had not properly understood the provisions of the settlement, which in some respects were defective. The expression "undue influence" was not confined to cases where influence was exerted to confer a benefit on the person exerting it, but extended to cases in which a person of imperfect judgment came under the direction of one who possessed not only greater experience but also the force inherent in the relationship of parent and child. The influence of the father, exercised personally and through his solicitor, was "undue" in the sense that it necessarily had a constraining effect on the mind of the plaintiff, who ought to have been placed in the hands of someone who was constrained to secure her interests and hers alone. It was doubtful whether the plaintiff realised that her father and brother had no right to accept benefits from her. Such a settlement could only be justified after prolonged consideration and independent advice, neither of which had been forthcoming. It had been said that the plaintiff had been guilty of *laches* and acquiescence, but in the four years between the discovery by the plaintiff that the settlement was open to objection and the issue of the writ, the plaintiff had made unsuccessful attempts to persuade the trustee bank to revoke the settlement, as they had power to do. The plaintiff was entitled to have the settlement revoked. Judgment for the plaintiff.

APPEARANCES: C. Fletcher-Cooke (Hall, Brydon, Egerton and Nicholas); E. Blanshard Stamp (Lithgow, Pepper & Eldridge).

[Reported by F. R. Dymond, Esq., Barrister-at-Law] [2 W.L.R. 1]

# **QUEEN'S BENCH DIVISION**

## **PRACTICE NOTE**

## **RATING: APPEAL TO VALUATION COURT WITHDRAWN: PERSONS ENTITLED TO BE HEARD**

### ***In re Brixham Urban District Council***

### ***In re Salcombe Urban District Council***

### ***In re Totnes Urban District Council***

Hilbery, Lynskey and Parker, JJ. 4th October, 1954

Applications *ex parte* for leave to apply for orders of *mandamus*.

In the application by the Brixham Urban District Council the following were among the facts relied upon: A local valuation officer made a proposal to alter the valuation list and, objection having been made, served notice of appeal on the local valuation court under s. 48 of the Local Government Act, 1948. The applicants, the rating authority, were in complete agreement with the valuation officer's proposal and therefore they took no steps themselves. When the appeal was due to be heard the valuation officer wrote to the clerk of the valuation court withdrawing his appeal, and when the court sat he did not appear. The court refused to hear the rating authority or to determine the appeal, and the rating authority applied for leave to apply for an order of *mandamus* directing the valuation court to hear and determine the appeal of the valuation officer on the grounds that, once notice of appeal had been given, a duty was imposed by s. 48 (1) on the valuation court to hear it and that, since subs. (3) entitled certain persons to appear as parties to the appeal, those persons had a right to have the appeal heard. The other two applications turned upon the same point.

During the course of the argument HILBERY, J., said that the appellant was in control of whether he went on with the appeal

or not; the Act did not give other persons the right to have the appeal heard, but certain rights on the hearing of the appeal, and when the appellant abandoned his appeal there was nothing upon which those persons had a right to be heard. Applications refused.

APPEARANCES: *G. D. Squibb (Sharpe, Pritchard & Co., for T. Owen Davies, Brixham).*

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 5]

#### LANDLORD AND TENANT: RENT RESTRICTION: PROMISE BY TENANT TO GIVE POSSESSION FOR VALUABLE CONSIDERATION

**Rajenback v. Mamon**

Wynn Parry, J. (sitting as an additional judge).

7th December, 1954

Action for a declaration.

The plaintiff, the tenant of a rent restricted flat, agreed in May, 1954, with the defendant, his landlord, that if the plaintiff should give up possession of the flat on or before the end of 1954 he should be entitled to be paid £300 by the defendant on so doing. On the defendant later repudiating this agreement, the plaintiff brought an action claiming a declaration in accordance with its terms. It was contended for the defendant that the agreement was void and unenforceable on the grounds of public policy and want of mutuality, and as being an attempt to contract out of the Rent Acts.

WYNN PARRY, J., said that the defendant contended that the agreement was unenforceable on the ground laid down in *Barton v. Fincham* [1921] 2 K.B. 291, but that case did no more than give effect to the limitation on the jurisdiction of the court to make an order for possession imposed originally by s. 1 (5) of the Act of 1920; it did not deal with questions of public policy. The agreement was one of promise for promise, and there was said to be want of mutuality, because the defendant landlord could not enforce it. On the other hand, if the plaintiff, as he intended, gave up possession at the end of the year, the defendant would obtain all he had sought by the agreement. No authority had been cited which showed that the agreement was against public policy, and there were many cases in which Parliament had to some extent robbed contracts of mutuality. There would be a declaration that if the plaintiff gave up possession on or before 1st January, 1955, he would be entitled to be paid £300 by the defendant on that date. Declaration accordingly.

APPEARANCES: *Montague Waters (Cyril Rallon); D. Ackner (Stanley Attenborough & Co.).*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

[2 W.L.R. 21]

#### COURT OF CRIMINAL APPEAL

##### ACCESSORY BEFORE THE FACT: DIRECTION TO JURY: KNOWLEDGE THAT PARTICULAR CRIME IN VIEW

**R. v. Bullock**

Lord Goddard, C.J., Cassels and Devlin, JJ.

6th December, 1954

Appeal against conviction.

The appellant was charged on two counts alleging breaking and entering on two separate occasions houses in the country, one house being in Leicestershire and the other in Wiltshire. There was sufficient evidence to suggest that the appellant had some connection with both crimes and on each occasion a car hired by him was seen in the vicinity of the house broken into. The appellant's defence was an alibi and at the trial the case for the prosecution and the summing-up proceeded on the basis that he was concerned in the breaking and entering. After the jury had been absent for about three-quarters of an hour they returned and asked the judge what was the law regarding a person who had knowledge of the fact that his car was being used for an unlawful purpose. The judge directed the jury, in effect, that if they were not satisfied that the appellant was present at the house broken into but found that to his knowledge the car was being driven by a thief or thieves, and he knew beforehand that it was going to be used for that purpose, then the appellant would be an accessory before the fact. The appellant was convicted of being an accessory before the fact and, relying on *R. v. Lomas* (1913), 9 Cr. App. R. 220, he appealed on the ground that the judge's direction was, in the circumstances, inadequate.

DEVLIN, J., said that mere knowledge that the principal intended to commit crime was not of itself enough to constitute an accessory before the fact, but in the circumstances of the case once it was plain that the appellant had hired the car and had control of it, it was equally plain, if he knew that it was being used, that he must also have permitted its use; he must have lent it for that purpose and that was certainly enough. *R. v. Lomas* was upon that point quite different. The second part of the headnote to *R. v. Lomas*, "there must be some particular crime in view," was not derived from anything contained in the judgment and there was nothing to show that that was the decisive point taken by the court. The direction given in the present case must be considered with the background of the facts and the appellant's defence. Once the jury were satisfied that he did know that the car was being used for an unlawful purpose there was no need to give an elaborate direction as to whether the unlawful purpose was merely a general purpose or the intent to commit one or other of the specific crimes. In the circumstances the direction given was quite adequate. Appeal dismissed.

APPEARANCES: *F. H. Lawton (Sampson & Co.); J. A. Grieves (B. F. Chapman, Leicestershire).*

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 1]

## SURVEY OF THE WEEK

### STATUTORY INSTRUMENTS

**Baking Wages Council** (Scotland) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 1684.) 6d.

**County of Gloucester** (Electoral Divisions) Order, 1954. (S.I. 1954 No. 1722.)

**County of Surrey** (Electoral Divisions) (No. 2) Order, 1954. (S.I. 1954 No. 1695.)

**Counties of Berwick and Roxburgh** Water Order, 1954. (S.I. 1954 No. 1692 (S. 187).)

**East Worcestershire** Water Order, 1954. (S.I. 1954 No. 1705.)

**Fustian Cutting Wages Council** (Great Britain) Wages Regulation Order, 1954. (S.I. 1954 No. 1685.) 5d.

**General Waste Materials Reclamation Wages Council** (Great Britain) Wages Regulation Order, 1954. (S.I. 1954 No. 1696.) 6d.

**International Organisations** (Immunities and Privileges of the North Atlantic Treaty Organisation) Order, 1954. (S.I. 1954 No. 1471.) 6d.

**Juvenile Courts** (Constitution) Rules, 1954. (S.I. 1954 No. 1711 (L. 21).) 5d.

**Kitchen Waste** (Licensing of Private Collectors) (Revocation) (Scotland) Order, 1954. (S.I. 1954 No. 1716 (S. 190).)

**Kuwait** (Amendment) Order, 1954. (S.I. 1954 No. 1702.)

**Landlord and Tenant** (Notices) (No. 2) Regulations, 1954. (S.I. 1954 No. 1714.) 6d.

As to these regulations, see p. 18, *ante*.

**Metropolitan Water Board** (Ashford Common) Order, 1954. (S.I. 1954 No. 1700.)

**Miscellaneous Controls** (Revocation) Order, 1954. (S.I. 1954 No. 1693.)

**National Assistance** (Determination of Need) Amendment Regulations, 1954. (S.I. 1954 No. 1704.)

**New Forest** (Confirmation of Byelaws) (No. 2) Order, 1954. (S.I. 1954 No. 1697.)

**North of Scotland Hydro-Electric Board** (Constructional Scheme No. 26) Confirmation Order, 1954. (S.I. 1954 No. 1707 (S. 188).)

**Northern Rhodesia** (No. 2) Order in Council, 1954. (S.I. 1954 No. 1703.)

**Paper** (Miscellaneous Controls) (Amendment) Order, 1954. (S.I. 1954 No. 1694.)

**Police** (Scotland) Amendment (No. 2) Regulations, 1954. (S.I. 1954 No. 1715 (S. 189).)

**Probation** (No. 3) Rules, 1954. (S.I. 1954 No. 1719 (L. 22).) 5d.

**Puerperal Pyrexia (Amendment) Regulations, 1954.** (S.I. 1954 No. 1691.)

**Superannuation (Civil Service and Metropolitan Police Staff) Transfer Rules, 1954.** (S.I. 1954 No. 1723.) 5d.

**Town and Country Planning (Minerals) Regulations, 1954.** (S.I. 1954 No. 1706.) 8d.

These regulations, which came into force on 1st January, 1955, adapt and modify the Town and Country Planning Act, 1954,

to the case of minerals. They also revoke and re-enact the similarly named regulations of 1948, 1949 and 1953 so far as they are still required.

**Whaling Industry (Ship) (Amendment) Regulations, 1954.** (S.I. 1954 No. 1713.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-3 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

## POINTS IN PRACTICE

### Trustees—MORTGAGE ADVANCE BY TRUSTEES TO ONE OF THEMSELVES—RETIREMENT FROM TRUSTEESHIP

*Q.* A died intestate in December, 1952, leaving a widow B and two infant children. Letters of administration of A's estate were granted to B the widow and C. The widow is purchasing a freehold house for occupation by herself and her two children; she will provide the bulk of the purchase moneys out of her own separate estate, but wishes to borrow the remainder on first mortgage of the house. Can B and C as administrators (or trustees) of the estate of A advance moneys forming part of A's estate to B on first mortgage of the house, bearing in mind that B is one of the administrators (or trustees)? It can be assumed for the purpose of the above that a professional valuation of the house will be obtained and that the trustees will be advancing less than two-thirds of the value. According to a statement in Halsbury's Laws of England, 2nd ed., vol. 33, p. 240, "Trustees must not lend trust money to one of their number on mortgage." The cases quoted in support of this statement, however, are old and do not seem to be quite to the point.

*A.* The principle which prevents a trustee borrowing from himself and his co-trustees upon mortgage of a trustee security seems to be that a trustee cannot at the same time be both mortgagee and mortgagor (Underhill's Trusts, 9th ed., p. 344). This tends to have been obscured in the older cases, since before 1926 there was the procedural difficulty that a trustee could not covenant with himself, a difficulty now removed by s. 82 of the Law of Property Act, 1925. The difficulty of a trustee borrower being obliged to enforce the mortgage against himself remains and cannot, we think, be avoided. There seems, however, to be no objection to B retiring from the trust, a new trustee being appointed in her place. In a transaction of this nature there would not appear to be any advantage which B could have as a result of her trusteeship and which would vitiate the mortgage after her retirement.

### Landlord and Tenant Act, 1954—RENEWAL OF LEASE—COMPANY SUB-LETTING SHOPS

*Q.* A limited company is the leaseholder of property in an arcade in a shopping centre. The lease is for ninety-nine years from March, 1875, at the annual rent of £180. The buildings comprising the property are all retail shops, which are being sub-let to the shop tenants for terms of five years. Thus no part of the property is occupied by the company itself, nor is any of the property residential. What provisions of the various Landlord and Tenant Acts or the Leasehold Property Repairs Acts will apply when the company's term expires in March, 1974? It does not seem to us that Pt. II of the Landlord and Tenant Act, 1954, applies, nor does the first Part of the Act, which applies to houses held on ground lease, cover the company. The company want to know what rights they will have to a new lease, particularly as they are not occupying any part of the property themselves, and do not intend to do so.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

*A.* In our opinion, the Landlord and Tenant Act, 1954, confers no right to a renewal of the lease on the company. We consider that the words "and includes any activity carried on by a body of persons" in s. 23 (2) cover only such activities as fall within the earlier part of the subsection—trade, profession or employment—and this view is supported by the provisions of s. 44 and Sched. VI. The Leasehold Property (Repairs) Act, 1938, is extended in various ways by s. 51 of the Landlord and Tenant Act, 1954, and now applies to all demised property other than agricultural holdings if the tenancy was granted for not less than seven years; and this qualifies the company for some protection against claims for dilapidations brought before March, 1971, leave of court being necessary for enforcement.

### Lease—RENT VARIABLE BY REFERENCE TO COST OF LIVING INDEX

*Q.* We have occasion to prepare a £9,000 per annum lease for thirty-five years, and the clause hereunder has been suggested for insertion therein:—

"Should it be found on the 25th December, 1955, or on any subsequent 25th December during the continuance of this lease that the cost of living index stands at more or less than 20 per cent. higher or lower than on the 1st September, 1954, then the rent reserved in cl. 1 hereof shall be increased or decreased for the ensuing twelve months in direct proportion to the increase or decrease of the percentage whereby the cost of living index has increased or decreased over that prevalent at the 1st September, 1954."

In view of the fact that this cost of living clause is the first that has come to our notice and is most unusual, we would like your opinion as to whether it is in order and prudent, or might lead to complications.

*A.* We agree that such a clause would be most unusual, but the only possible objection which could, in our opinion, be advanced against it would be that the fluctuations would not be directly connected with anything done or not done by either party. There is ample authority for the proposition that a rent can be variable as long as it is ascertainable at the appropriate time; the judgments of Jessel, M.R., and Brett, L.J., in *Re Knight; ex parte Voisey* (1882), 21 Ch. D. 442 (C.A.), contain statements to this effect in general terms, and our view is that the fact that the examples cited by the former, and (as far as we know) all other examples relate to rents varying according to area ploughed, to electricity generated, to amount of mineral gotten, etc., does not invalidate, or detract from the validity of, the general proposition, which is, after all, illustrated by the ordinary "progressive rent." Till the passing of the Universities and College Estates Act, 1925, certain leases fixed rents, not according to the amount of wheat, etc., yielded by the demised premises, but according to market prices at the nearest markets, and in such cases the connection between the amount of rent and the activities of the parties was, of course, less direct. Subject to this, we see no reason why the clause should be impugned; Coke's requirement ("Certain Rent. (e) For the rent must be certain, or which may be reduced to a certainty": Ch. 12, sec. 213) appears to be satisfied. We would, however, add that it might be as well to make some express provision for a possible cessation of the practice of calculating and publishing the index.

### Rent Restriction—APPLICATION OF ACTS—"LETTING" ULTRA VIRES SCHOOL MANAGERS

*Q.* We act on behalf of the managers of a Church of England school which is still controlled and governed by the managers, despite the provisions of the Education Act, 1944. In 1943, the school managers, being in sympathy with the plight of a certain widow in the village, allowed her to take up residence

in the house attached to the school, which house was presumably in the old days for the occupation of the schoolmaster. It is understood that no written tenancy agreement was entered into, and the tenant ever since 1943 has paid a rental of £15 per year. The school house is old and has no sanitation, the tenant having to use the conveniences placed in the school yard for the use of the school children. Recently, the managers of the school were ordered to re-build these school conveniences and equip them with normal flushing water closets. The school managers now require possession of the school house for two reasons: (a) they require extra room for the school in the shape of a room, extra storage space and an alternative classroom; (b) they consider that it is undesirable that the tenant should continue to use the sanitary conveniences provided for the school, as they wish to have these locked at night to afford better protection. We ourselves cannot see any way at all of obtaining possession of the school house other than by providing alternative accommodation, as it is clearly not the object of the school managers to use the school house as a residence for a servant of the school, nor is the present tenant employed by the school managers. The only remote possibility which we can see is that the act in letting the school house might have been, as it were, "*ultra vires*" the school managers. Assuming that such act was, in fact, *ultra vires*, do you consider that in such a case the present school managers could revoke the tenancy?

A. In so far as it is suggested that the absence of sanitation might negative the proposition that the building was a "house"

or that it was "let as a dwelling," it is true that some support might be found for this suggestion in *Bakes v. Huckle* [1948] V.L.R. 159 ("whether the premises . . . possessed the characteristics ordinarily found in buildings used or let for human habitation as homes") and *Wright v. Howell* (1947), 92 Sol. J. 26 (C.A.) ("all the major activities of life"); but in our opinion the provision of facilities by way of appurtenance would be fatal to such a contention. Subject, however, to fuller information about the origin and nature of the managers' powers in this case, we consider that the course proposed would be sound and would negative the proposition that the dwelling-house was "let," the result being that the Rent, etc., Restrictions Acts would not apply to the relationship. Support for this view can be found in two authorities: (i) *President and Governors of the Magdalen Hospital v. Knotts and Others* (1879), 4 App. Cas. 324 (and while in that case the "lessees" were held to have acquired a "squatter's title," in the case submitted there has, presumably, been acknowledgment by payment of "rent" within the period); (ii) *Minister of Agriculture and Fisheries v. Matthews* [1950] 1 K.B. 148. Attention is drawn, *ex abundante cautela*, to the circumstances that in the first-mentioned case the "lease" was void by statute, and not merely voidable; and that in the second-mentioned case the plaintiff (not estopped because his rights were statutory) had no estate in the land at all. Attempts might be made to distinguish the present case on these lines, but, subject to the nature of the particular powers, presumably created by a trust, such attempts would in our opinion fail.

## NEW YEAR LEGAL HONOURS

### KNIGHTS BACHELOR

EDGAR LAYTON BEAN, Esq., C.M.G., Parliamentary Draftsman, State of South Australia. Admitted to the Bar of South Australia, 1922.

DAVID ARNOLD SCOTT CAIRNS, Esq., Q.C., Chairman of the Monopolies and Restrictive Practices Commission. Called by the Middle Temple, 1926, and took silk 1947.

WILLIAM CHARLES CROCKER, Esq., M.C., President of The Law Society, 1953. Admitted 1912.

GEORGE PANTON FINLAY, Esq., Senior Puisne Judge of the Supreme Court of New Zealand.

JOSEPH TROUNSELL GILBERT, Esq., Q.C., Chief Justice of Bermuda. Called by Lincoln's Inn, 1914, and took silk (Bermuda) 1949.

ERIC HALLINAN, Esq., Chief Justice of Cyprus. Called by King's Inns, 1923, and Gray's Inn, 1927.

RONALD MARTIN HOWE, Esq., C.V.O., M.C., Deputy Commissioner of the Metropolitan Police Force. Called by the Inner Temple, 1924.

Colonel FRANCIS JAMES GIDLOW JACKSON, M.C., T.D. Admitted 1912.

Brigadier FRANK MEDLICOTT, C.B.E., M.P. Admitted 1925.

ROBERT BERNARD WATERER, Esq., C.B., Solicitor to the Board of Inland Revenue. Admitted 1917.

### ORDER OF THE BATH

C.B.

JOHN MATHEW DICK, Esq., C.B.E., V.R.D., Solicitor to the Secretary of State for Scotland.

MAURICE GORDON WHITOME, Esq., Solicitor to the Board of Customs and Excise. Called by Gray's Inn, 1928.

### ROYAL VICTORIAN ORDER

C.V.O.

KENNETH ROY ELDIN TAYLOR, Esq., Solicitor for the Affairs of Her Majesty's Duchy of Lancaster.

### ORDER OF THE BRITISH EMPIRE

K.B.E.

Major-General WILLIAM HENRY CUNNINGHAM, C.B.E., D.S.O., V.D., Crown Prosecutor in Wellington, New Zealand.

The Honourable WILFRED KELSHAM FULLAGAR, Justice of the High Court of the Commonwealth of Australia. Commenced practice at the Victorian Bar, 1922, and took silk (Victoria) 1933.

The Honourable FRANK WALTERS KITTO, Justice of the High Court of the Commonwealth of Australia. Called to the Bar of New South Wales, 1927, and took silk (New South Wales) 1942.

C.B.E.

DUDLEY FITZ-MOWBRAY APPLEBY, Esq. Admitted 1928.

REGINALD PRIDHAM BAULKWILL, Esq., O.B.E., Assistant Public Trustee. Admitted 1918.

Alderman WILLIAM CHARLES BONNEY. Admitted 1919.

THUSEN SAMUEL FERNANDO, Esq., Q.C., Solicitor-General of Ceylon.

HAROLD JAMES HAMBLIN, Esq. Admitted 1928.

JOHN JOSEPH MCINTYRE, Esq., O.B.E., Secretary of the Rural District Councils Association. Admitted 1906.

ROBERT MUCKLE, Esq., Chairman of the Board of Governors, United Newcastle-upon-Tyne Hospitals. Admitted 1915.

BENJAMIN GARNET LAMPARD-VACHELL, Esq., J.P., Chairman of the Devon County Education Committee. Called by the Middle Temple, 1923.

O.B.E.

FREDERICK PETER RUSSELL MALLOWS, Esq., Senior Legal Assistant, Ministry of Agriculture and Fisheries. Called by the Middle Temple, 1934.

CYRIL RYAN WILLIFORD TINDALL, Esq., Senior Legal Assistant, Office of Her Majesty's Procurator-General and Treasury Solicitor. Admitted 1922.

## CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

### Guarantees by Local Authorities: Stamp Duty

Sir,—We have read with interest the Article "Guarantees by Local Authorities" appearing in the current issue of THE SOLICITORS' JOURNAL [98 Sol J. 876].

In the paragraph headed "(c) Fees" your contributor states "the Stamp Duty on the Guarantee Deed will, of course, be payable in addition."

On the first occasion upon which we handled a transaction of this nature we submitted the Guarantee Deed to the Stamp Office for stamping and were informed by the official concerned that the document did not attract stamp duty.

Selby, Yorks.

PARKER, MARCH, CHARLTON & EASTHAM.

[The office of the Controller of Stamps states that these deeds are exempt under s. 41 of the Building Societies Act, 1874.—ED.]

## NOTES AND NEWS

### Honours and Appointments

The Queen has been pleased to appoint Lieutenant-Colonel JOHN FREDERICK EUSTACE STEPHENSON (A.O.E.R.) to be Recorder of the Borough of Bridgwater, with effect from 21st December, 1954.

The Queen has been pleased to appoint Mr. GEORGE STANLEY WALLER, O.B.E., Q.C., to be Recorder of the Borough of Sunderland, with effect from 29th December, 1954.

The Queen has been pleased to approve the appointment of Brigadier ALFRED CEDRIC COWAN WILLWAY, C.B., C.B.E., T.D., to be Deputy Chairman of the Court of Quarter Sessions for the County of Surrey, with effect from 23rd December, 1954.

The Lord Chancellor has appointed Mr. EDWIN ARTHUR EVERETT, Registrar of Bow County Court, to be in addition the Registrar of Edmonton County Court as from 1st January, in succession to Mr. G. Owen White, who retired on 31st December, 1954.

The Lord Chancellor has appointed Mr. ARTHUR ROBERT CHARLES KIRTLAN, Registrar of the Shrewsbury, Market Drayton, Wellington and Whitchurch County Courts and District Registrar in the District Registry of the High Court of Justice in Shrewsbury, to be in addition the Registrar of Oswestry and Llanfyllin County Court as from 1st January, in succession to Mr. E. Louis Jones, who retired on 31st December, 1954.

Mr. JOHN GEOFFREY OGDEN, solicitor, of Keighley, has been appointed part-time clerk to Keighley magistrates, in succession to Mr. Samuel Clapham, who has retired after being in the court's service since 1934, and to whom a presentation was made on 30th December, 1954.

Mr. HARRY RHEEDER PARKER, solicitor, of Newcastle, was appointed to the legal staff of Sunderland Corporation with effect from 1st January.

Mr. G. D. YANDELL, for the past three years clerk to the Shire Hall magistrates, Nottingham, has been appointed magistrates' clerk at Nottingham Guildhall.

The following appointments are announced in the Colonial Legal Service: Mr. H. S. S. FEW, District Officer, Uganda, to be Resident Magistrate, Uganda; Mr. B. P. O'BYRNE, Crown Solicitor, Northern Rhodesia, to be Crown Counsel, Northern Rhodesia; Mr. G. M. PATERSON, Attorney-General, Sierra Leone, to be Attorney-General, Gold Coast; Mr. A. J. SANGUINETTI, Crown Counsel, Kenya, to be Assistant Attorney-General, Gibraltar; and Mr. M. T. MALONEY to be Resident Magistrate, Uganda.

### Personal Note

In the Penybont (Glam.) Rural District Council Chamber recently, a plaque in memory of the late Mr. William Eustace Bevan, the late clerk to the Council, who held the appointment for twenty-four years, was unveiled in the presence of his widow and members and officials of the Council.

### Miscellaneous

On and after 28th February, the address of that part of the office of the Solicitor to the Ministry of Pensions and National Insurance and to the National Assistance Board, which is at present accommodated at 30 Euston Square, London, N.W.1, will be Thames House South, Millbank, London, S.W.1. Telephone: ABBey 1200. Telegrams: Natance, Sowest, London.

### WAR DAMAGE TO BRITISH PROPERTY IN FRENCH OVERSEAS DEPARTMENTS AND TERRITORIES

It is officially announced that an exchange of notes dated 6th October, 1954, between Her Majesty's Government in the United Kingdom and the Government of the French Republic provides that the French Government will grant to British nationals, whose property in the French Overseas Departments and Territories, and in territories for whose international relations the Government of the French Republic are responsible, was lost or damaged as a result of the Second World War,

treatment as regards compensation equal to that accorded to French nationals in respect of similar loss or damage. The agreement does not cover war damage losses sustained in Vietnam, Cambodia or Laos. Any corporation or association in which the French and British interests together constitute a majority holding or control will receive treatment equal to that accorded to corporations or associations in which the majority holding or controlling interest is British or French.

British nationals who consider that they have grounds for making claims under the agreement should apply to the responsible French authorities direct. The addresses of those authorities are given below. The closing date for the admission of claims is 10th December, 1955.

The registration of property or claims with the Foreign Office, Administration of Enemy Property Department (formerly T.W.E.D.), or any other British Government Agency, the British Chamber of Commerce in London and/or with any British Embassy or Consulate abroad, does not constitute the lodging of a claim with the competent French authorities.

Her Majesty's Embassies and Consulates in the countries concerned cannot act as agents for presenting and pursuing individual claims. The actual submission and subsequent correspondence should be carried on by claimants direct with the competent French authorities.

The text of the exchange of notes is published by Her Majesty's Stationery Office as Cmd. 9331, and copies may be obtained from them or through any bookseller.

### LIST OF FRENCH AUTHORITIES TO WHOM CLAIMS SHOULD BE ADDRESSED

- |                                 |   |
|---------------------------------|---|
| (1) Tunisia .. ..               | Monsieur le Resident General,<br>Commissariat a la Reconstruction,<br>et au Logement a Tunis. |
| (2) Algeria .. ..               | Monsieur le Gouverneur,<br>General a Alger.   |
| (3) Occidental French<br>Africa | Monsieur le Gouverneur General,<br>Dakar,<br>Senegal.   |

In The Law Society's Intermediate Examination held on 11th and 12th November, 1954, of the four candidates who gave notice for the whole Examination, two passed the Law portion only. Of the 233 candidates who gave notice for the Law portion only, 161 passed, of whom J. M. Kinsman, A. D. S. Lees, J. H. T. Rees, D. Rubin, P. D. Smithson, H. F. W. Wilson and R. J. Wilson were placed in the First Class. Of the 415 candidates who gave notice for the Trust Accounts and Book-keeping portion only, 240 passed.

The London County Council Kennington College of Commerce and Law, Kennington Road, S.E.11, announce that a series of eight lectures for practitioners and others interested, under the title "Modern Developments in the Law of Landlord and Tenant," will be given on the Housing Repairs and Rents Act, 1954, and the Landlord and Tenant Act, 1954, at the College on Monday evenings, from 7-9 p.m., commencing on Monday, 17th January. The lecturer will be Mr. K. R. Bagnall, LL.B. (Hons.), barrister-at-law. The fee for the course will be two pounds. Consideration is being given to following this series with a further eight lectures on the Town and Country Planning Act, 1954. Application forms for those interested in either series may be obtained from the College.

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